

## **METROPOLITAN AREA PLANNING COMMISSION**

### **MINUTES**

**June 29, 2000**

The regular meeting of the Metropolitan Area Planning Commission was held Thursday, June 29, 2000 at 1:15 p.m., in the Planning Department Conference Room, 10<sup>th</sup> Floor, City Hall, 455 North Main Street, Wichita, Kansas. The following members were present: Frank Garofalo, Chair; James Barfield; Bud Hentzen; Bill Johnson; Richard Lopez; Ron Marnell; John W. McKay, Jr., (late arrival); Jerry Michaelis (late arrival); Susan Osborne-Howes; George Platt; Harold Warner; and Ray Warren. Chris Carraher was not present. Staff members present were: Marvin S. Krout, Secretary; Dale Miller, Assistant Secretary; Donna Goltry, Principal Planner; Scott Knebel, Senior Planner; Lisa Van de Water, Senior Planner; Barry Carroll, Associate Planner, and Karen Wolf, Recording Secretary.

#### **1. Approval of May 25, 2000 minutes**

**GAROFALO** "I have some corrections on these minutes, but to conserve time, I will give them to the secretary. I would consider a motion to approve the minutes as amended."

**MOTION:** That the Metropolitan Area Planning Commission approve the May 25, 2000 minutes as amended.

**WARREN** moved, **LOPEZ** seconded the motion, and it carried unanimously. (8-0).

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#### **2. Consideration of Subdivision Committee recommendations.**

**GAROFALO** "Is there anyone who wants to pull any cases or have any questions on any? Is there anyone in the audience who wants to speak on any of the Subdivision items?"

McKay arrived at the meeting at 1:30 p.m.

Subdivision Committee items 2/1,2/2, 2/3, 2/4, 2/5,2/6, 2/7, 2/8, 2/9 and 2/10 were approved, subject to the Subdivision Committee recommendations (**MARNELL** moved, **LOPEZ** seconded the motion, and it carried unanimously (9-0-1) McKay abstained.

#### **2/1. SUB2000-19 - One-step Final Plat of POWERS ACRES ADDITION, located on the west side of 143<sup>rd</sup> street East, north of MacArthur.**

- A. Since neither municipal water nor sanitary sewer is available to serve this property, the applicant shall contact the Environmental Health Division of the Health Department to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage facilities and water wells. A memorandum shall be obtained specifying approval. Health Department needs to comment on the feasibility of buildable lots due to the floodway reserve constraints. A restrictive covenant will be required regarding the twin lagoon system.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- C. County Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan is approved.
- D. County Engineering needs to comment on the access controls. The plat proposes two access openings along 143<sup>rd</sup> St. East. The access controls are approved.
- E. The size of both lots (4.461 acres) does not meet the minimum lot size requirement of 4.5 acres for lots in the RR district serviced by sewage lagoons. A modification by the Subdivision Committee and an administrative adjustment from the Zoning regulations will need to be approved. A modification has been approved by the Subdivision Committee.
- F. The lot width to depth ratio (5.73) exceeds the maximum 2.5 to 1 standard and a modification by the Subdivision Committee will need to be approved. A modification has been approved by the Subdivision Committee.
- G. The lot width of both lots (184 ft) does not meet the minimum 200-ft standard and a modification by the Subdivision Committee and an administrative adjustment from the Zoning regulations will need to be approved. A modification has been approved by the Subdivision Committee.
- H. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject

to submittal of this binder and any relevant conditions found by such a review.

- I. The platlor's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- J. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- K. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- L. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- M. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- N. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- O. Perimeter closure computations shall be submitted with the final plat tracing.
- P. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- Q. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- R. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

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**2/2. S/D 00-17 - Final Plat of STRUTHERS CREEK ADDITION, located on the south side of 103<sup>rd</sup> Street South, West of 247<sup>th</sup> Street West.**

- A. Since neither municipal water nor sanitary sewer is available to serve this property, the applicant shall contact the Environmental Health Division of the Health Department to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage facilities and water wells. A memorandum shall be obtained specifying approval. A lot layout is required to be submitted for Lot 4. Additional soil testing is required.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- C. County Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan is approved. Minimum pad elevations have been determined based on the HEC-2 Run – 1298 (Lot 1), 1298 (Lot 2), 1299 (Lot 3), and 1305 (Lot 4). A Letter of Map Amendment (LOMA) needs to be provided before release of the plat for recording.
- D. The Applicant has platted one opening along 103rd St. South, and two openings along K-42. County Engineering and KDOT need to comment on the access controls. KDOT has approved two openings along K-42. County Engineering has required complete access control along the east 200 feet of the plat's frontage to 103<sup>rd</sup> St. South and one opening along the remaining frontage.
- E. The joint access opening between Lots 2 and 3 needs to be established by separate instrument.
- F. County Surveying has advised that the plat boundary does not close.
- G. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- H. If platted, the building setback may be a minimum of 30 feet to conform with the RR District zoning standards.

- I. Thomas G. Winters shall be indicated as the Chairman of the County Commissioners.
- J. "Tricia L. Robello, LS #1246" shall be indicated as the Deputy County Surveyor.
- K. Francis S. Garofalo shall be indicated as the Chairman of the Planning Commission.
- L. Marvin S. Krout shall be indicated as the Secretary of the Planning Commission.
- M. The platlor's text shall delete the language referencing the dedication to the appropriate governing body of the access easement between Lots 2 and 3.
- N. The platlor's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- O. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- P. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- Q. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- R. The applicant is advised that various State and Federal requirements [specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147] for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- S. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- T. Perimeter closure computations shall be submitted with the final plat tracing.
- U. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- V. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- W. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

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**2/3. SUB2000-28 - Final Plat of WESTBROOK MANOR ADDITION, located on the north side of 63<sup>rd</sup> Street South, east side of 151<sup>st</sup> Street West.**

- A. Since neither municipal water nor sanitary sewer is available to serve this property, the applicant shall contact the Environmental Health Division of the Health Department to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage facilities and water wells. A memorandum shall be obtained specifying approval. The size of Lot 1 necessitates the use of a septic system. A restrictive covenant is required addressing the buildable area in Lot 2.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- C. County Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan is approved. The floodway reserve should be extended to include the south boundary of Lot 1. The minimum pad elevation shall be indicated for Lot 1.
- D. County Engineering needs to comment on the need for access controls. The plat shall dedicate access control except for two openings along 63<sup>rd</sup> St. South and one opening along 151<sup>st</sup> St. West. The dedication of access controls shall be referenced in the platlor's text.

- E. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- F. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- G. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- H. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- I. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- J. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- K. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- L. Perimeter closure computations shall be submitted with the final plat tracing.
- M. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- N. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- O. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

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**2/4. SUB2000-44 - One-step final plat of CARCO ADDITION, located south of Pawnee, west of West Street.**

- A. Municipal water is available to serve the site. The Applicant shall guarantee the extension of sanitary sewer.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- C. City Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan is approved. A guarantee will be required at time of site development.
- D. Traffic Engineering needs to comment on the access controls. The plat proposes one access opening along West Street. Access controls are approved.
- E. The distance from the property to the north tie point shall be indicated.
- F. The tie point to the south shall be revised to reference the "E ¼ cor of NE ¼".
- G. The tie point of the north needs to be revised to reference Township 28 South.
- H. In the surveyor's certificate, "R2W" needs to be revised to "R1W".
- I. On the east line of the plat, the dimension of 433.75 needs to be changed to 398.75.
- J. On the east line of vacated 27<sup>th</sup> Street, the dimension and bearing need to be added.
- K. The centerline of the railroad tracks should be indicated.
- L. Measurements between monuments need to be shown on the west line of vacated 27<sup>th</sup> Street and near the north end of the plat.

- M. The Missouri Pacific Railroad needs to be labeled with the current owner.
- N. The plat name needs to be labeled in the surveyor's certificate and in the plat's title as "to Wichita".
- O. In the owner's certificate, "Lots" needs to be changed to "Lot", and "a Block" needs to be removed.
- P. The owner's names "Jim Wood" and "Freda Wood" need to be changed to "James L. Wood" and "Freda L. Wood".
- Q. The recording data for the vacated 27<sup>th</sup> Street needs to be shown.
- R. If platted, the building setback may be 20 feet to conform with Zoning regulations. Any enlargement of the existing structure must conform with the setback.
- S. This property is within a zone identified by the City Engineers' office as likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Building with specially engineered foundations or with the lowest floor opening above groundwater is recommended, and owners seeking building permits on this property will be similarly advised. More detailed information on recorded groundwater elevations in the vicinity of this property is available in the City Engineers' office.
- T. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- U. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- V. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- W. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- X. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- Y. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- Z. Perimeter closure computations shall be submitted with the final plat tracing.
- AA. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- BB. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- CC. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

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- 2/5. SUB2000-45** - One-step final plat of MID-CONTINENT AIRPORT 2<sup>ND</sup> ADDITION, located on the northwest corner of Harry and Ridge Road.
- A. City water is available to serve the site. A petition for the extension of sanitary sewer will be required at time of site development.
  - B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
  - C. City Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan is approved. A drainage guarantee is required at time of site development.

- D. Traffic Engineering needs to comment on the need for access controls to Harry and Ridge Road. Distances should be shown for all segments of access control. Two points of access are permitted along Ridge Road. One point of access is permitted along Harry.
- E. The applicant shall submit an avigational easement covering all of the subject plat and a restrictive covenant assuring that adequate construction methods will be used to minimize the effects of noise pollution in the habitable structures constructed on subject property.
- F. The platlor's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- G. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- H. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- I. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- J. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- K. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- L. Perimeter closure computations shall be submitted with the final plat tracing.
- M. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- N. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- O. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.  
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**2/6. SUB2000-46 - One-step final plat of MID CONTINENT AIRPORT 3<sup>d</sup> Addition, located on the west side of Hoover, North and south sides of Pawnee.**

- A. Municipal services are available to serve the site. No guarantees are required.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- C. City Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan is approved.
- D. Traffic Engineering needs to comment on the need for access controls. Distances should be shown for all segments of access control. Four openings have been approved north of Pawnee, one opening south of Pawnee.
- E. The Applicant shall attempt to obtain a vacation for the north half of May Street.
- F. This property is within a zone identified by the City Engineers' office as likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Building with specially engineered foundations or with the lowest floor opening above groundwater is recommended, and owners seeking building permits on this property will be similarly advised. More detailed information on recorded groundwater elevations in the vicinity of this property is available in the City Engineers' office.
- G. The applicant shall submit an avigational easement covering all of the subject plat and a restrictive covenant

assuring that adequate construction methods will be used to minimize the effects of noise pollution in the habitable structures constructed on subject property.

- H. The platlor's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- I. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- J. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- K. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- L. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- M. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- N. Perimeter closure computations shall be submitted with the final plat tracing.
- O. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- P. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- Q. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.  
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**2/7. SUB2000-47 - One -Step Final Plat of MID CONTINENT AIRPORT 4<sup>TH</sup> ADDITION, located on the north side of K-42 Highway, East and West sides of Ridge Road (extended).**

- A. The Applicant shall guarantee the extension of City water and sanitary sewer at the time of development.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- C. City Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan is approved.
- D. KDOT needs to comment on the access controls. The plat indicates one opening along K-42 Highway. KDOT has approved the opening.
- E. The applicant shall submit an avigational easement covering all of the subject plat and a restrictive covenant assuring that adequate construction methods will be used to minimize the effects of noise pollution in the habitable structures constructed on subject property.
- F. The platlor's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- G. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- H. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.

- I. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- J. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- K. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- L. Perimeter closure computations shall be submitted with the final plat tracing.
- M. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- N. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- O. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

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**2/8. SUB2000-48** - One-Step Final Plat of MID CONTINENT AIRPORT 5<sup>TH</sup> ADDITION, located west of Ridge Road, on the north side of K-42 Highway.

- A. City Engineering needs to comment on the need for any other guarantees or easements. No guarantees are required.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- C. City Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan is approved.
- D. The plat shall be revised to include the vacation of Eitel Road and this lot tied together by restrictive covenant with the adjoining lot to the east.
- E. The applicant shall submit an avigational easement covering all of the subject plat and a restrictive covenant assuring that adequate construction methods will be used to minimize the effects of noise pollution in the habitable structures constructed on subject property.
- F. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- G. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- H. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- I. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- J. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- K. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.



- L. Perimeter closure computations shall be submitted with the final plat tracing.
  - M. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
  - N. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
  - O. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.
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**2/9. SUB2000-50 - MID CONTINENT AIRPORT 7<sup>TH</sup> ADDITION, located on the south side of Kellogg, west of Mid-Continent Airport Road.**

- A. Sanitary sewer services are available to serve the site. The Applicant shall guarantee the extension of City water to serve the lot at the time of site development.
  - B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
  - C. City Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan is approved.
  - D. The applicant shall submit an avigational easement covering all of the subject plat and a restrictive covenant assuring that adequate construction methods will be used to minimize the effects of noise pollution in the habitable structures constructed on subject property.
  - E. The recording information in the platlor's text for the access easement needs to be corrected.
  - F. The platlor's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
  - G. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
  - H. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
  - I. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
  - J. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
  - K. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
  - L. Perimeter closure computations shall be submitted with the final plat tracing.
  - M. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
  - N. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
  - O. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.
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**2/10. DED2000-14 - Dedication of a Utility Easement from American Postal Workers Union LOC 735 (Thelbert O. and**

Linda J. Matney, and Ronald D. and Gina D. Barkley), for property located east of Ridge Road, north of Harry.

OWNER/APPLICANT: Ron Barkley, 657 N. Karen, Wichita, KS 67212

LEGAL DESCRIPTION: Part of Lot 3, Block A, Airport Industrial Addition.

PURPOSE OF DEDICATION: This Dedication is a requirement of Lot Split No. L/S 1034, and is being dedicated for the extension of a sewer line.

Planning Staff recommends that the Dedication be accepted.

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**GAROFALO** "Is there anyone in the audience who wishes to speak on agenda items 3/1 and 3/2?"

**LISA VAN DE WATER**, Planning staff "I just want to make one clarification on Item 3/2. The Subdivision approved both of these items, 3/1 and 3/2, but there has been a clarification on the legal description for 3/2 to make it coincide with the site plan that was submitted. So it is 'access control except the north 70 feet and the south 75 feet'. That was what was shown on the site plan that was shown at Subdivision Committee."

**GAROFALO** "Say again the change."

**VAN DE WATER** "The change was an editing of the legal description. Originally, the legal description had said 'access control along the west line of this Reserve D', but the site plan showed only one opening along that western edge of the western boundary line, so we adjusted the legal description to fit the site description. So it is the access control except the north 70 feet and the southern 75 feet. It just gives them one opening into that area that was approved for a pool."

**GAROFALO** "Any questions on that?"

**MCKAY** "I will abstain on Item 3/2."

**WARREN** "Are we going to vote on these separately?"

**GAROFALO** "I think we can take them together. I asked if there was anyone to speak on these vacation items."

**MOTION:** That the Planning Commission recommend to the governing body that the requests be approved.

**WARREN** moved, **HENTZEN** seconded the motion, and it carried with 8 votes in favor. There was no opposition. McKay abstained.

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Michaelis arrived at the meeting at 1:27 p.m.

**FRANK GAROFALO**, Chair, read the following zoning procedural statement which is applicable to all City of Wichita zoning cases:

Before we begin the agenda, I would like to take this opportunity to welcome members of the public to this meeting of the Metropolitan Area Planning Commission. Copies of the agenda for today's meeting, the public hearing procedure, and copies of staff reports on zoning items are available at the table nearest to the audience.

The Commission's bylaws limit the applicant on a zoning or subdivision application and his or her representative(s) to a total of ten minutes of speaking time at the start of the hearing on that item, plus up to two minutes at the conclusion of that hearing. All other persons wishing to speak on agenda items are limited to five minutes per person. However, if they feel that it is needed and justified, the Commission may extend these times by a majority vote.

All speakers are requested to state your name and address for the record when beginning to speak. When you are done speaking, please write your name and address, and the case number, on the sheet provided at the table nearest to the audience. This will enable staff to notify you if there are any additional proceedings concerning that item. Please note that all written and visual materials you present to the Commission will be retained by the Secretary as part of the official record. If you are not speaking, but you wish to be notified about future proceedings on a particular case, please sign in on that same sheet.

The Planning Commission is interested in hearing the views of all persons who wish to express themselves on our agenda items. However, we ask all speakers to please be as concise as possible, and to please avoid long repetitions of facts or opinions which have already been stated.

For your information, the Wichita City Council has adopted a policy for all City zoning items, which is also available at the table with the other materials. They rely on the written record of the Planning Commission hearings and do not conduct

their own additional public hearings on these items.

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**ZONING:**

4. **Case No. ZON2000-00010** - Allen's Concrete, Inc. (owner) & Harper's Inc. (applicant) Mark Chappelle/Gary Goodson (agents) request a zone change from "SF-6" Single-Family Residential to "LI" Limited Industrial on property described as:

Beginning at the Southwest Corner of the Southeast quarter of Section 29, Township 27 South, Range 1 West of the 6th P.M. Sedgwick County, Kansas; thence East of the South line of the said Southeast Quarter, 875.5 feet; thence North parallel to the line of said Southeast Quarter, 593 feet more or less, to the South line of the A.T. & S.F. Railroad Right of Way, thence Westerly On said South Line 897.5 feet, more or less, to the West line of Said Southeast Quarter, thence South 402.5 feet to the point of beginning. Generally located on the corner of Harry Street and Seville Streets.

**BARRY CARROLL**, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

**BACKGROUND:** The applicant, Harper's, Inc., is requesting approval of "LI" Limited Industrial zoning on 10 acres of unplatted property currently zoned "SF-6" Single-Family Residential. The application area is a trapezoid shaped parcel and is located at the corner of Harry and Seville Streets (see site plan). Seville Street is located on the west, Harry Street is located to the south and the AT&SF Railroad is located on the northern edge of the property.

Starting in 1948, the site served as the Walt Keeler Concrete Plant. The plant ceased operation in 1996 and was subsequently purchased by Allen's Concrete, Inc. (parcel owner). Access to the site is currently from one entrance on the west via Seville Street (unpaved) and one on the south from Harry Street (unpaved). The applicant would like two additional entrances, or a total of three, along Harry Street.

The applicant has submitted a site plan for review (see attachment). There are plans to plat the property into two parcels. The largest parcel (7.1 acres) will be primarily for a freight business and a smaller "out parcel" (2.9 acres) is planned for the eastern area. There are plans to remodel an existing concrete structure located in the northwest corner of the larger parcel. Truck parking is planned for the center of the property; personal storage units are planned along the northern edge and bulk storage in the eastern part of the largest parcel. There are no identified uses for the smaller parcel at this time. The smaller parcel may be sold at a later time.

The majority of the 10-acre site consists of concrete slab paving. Per the zoning code, a screening fence, landscaping or berming will be required along the east property line, which is adjacent to "SF-6" zoned land. Mechanical equipment and outdoor work and storage areas must also be screened on all non-residential developments, except those located along local or collector streets founded on both sides by "OW," "IP," "LI," or "GI" zoning. Screening to reasonably hide from ground level view all loading docks, trash receptacles, ground level heating, air conditioning and mechanical equipment, outdoor storage, outdoor work areas or similar uses from any residential zoning district or public street right-of-way located within 150 feet of such uses (see UZC pages 159-160 for compatibility standards). The applicant will need to submit a Landscaping Plan for review which is consistent with the Landscaping Code – landscaped street yards and buffer landscaping by the property line plus parking with screening of any parking along Harry and Seville, and buffer landscaping along the east property line.

There are three businesses on the properties north of the application area and they are zoned "GC" General Commercial. The golf course south of the application area is zoned "SF-6" Single-Family Residential, the property east is a single family residence and zoned "SF-6," and the property to the west is also "SF-6" and developed as a park.

**CASE HISTORY:** None. [A concrete plant was on the site from 1948 until 1996 as a non-conforming use.]

**ADJACENT ZONING AND LAND USE:**

|               |                                  |                         |
|---------------|----------------------------------|-------------------------|
| <b>NORTH:</b> | "GC" General Commercial          | Three Retail Businesses |
| <b>EAST:</b>  | "SF-6" & "LI" Limited Industrial | Single-Family Residence |
| <b>SOUTH:</b> | "SF-6" Single-Family Residential | Municipal Golf Course   |
| <b>WEST:</b>  | "SF-6" Single-Family Residential | Municipal Park          |

**PUBLIC SERVICES:** Harry Street is an unpaved two-lane street. The 10-acre site has one entrance from Harry Street and one from Seville Street, an unpaved two-lane street. Traffic volumes are not rated. There is no City water on site. The closest City water is located east of the site and along Harry Street. Sewer services are available.

**CONFORMANCE TO PLANS/POLICIES:** The Land Use Guide of the Comprehensive Plan identifies the application area as being appropriate for industrial uses. The Plan contains an objective stating: "Promote industrial activities and development in a manner that is compatible with the built and natural environment." The primary location determinants are the characteristics of the individual use, nature of any emissions, the surrounding uses and zoning districts and the degree of compatibility with adjacent uses.

At the time of platting, the applicant may consider the following three options: 1) If the 10-acre parcel is platted into one large parcel, the applicant shall be required to pave Seville Street, from Kellogg Drive to the northwest entrance along Seville Street near the railroad tracks; 2) If the 10-acre parcel is platted into two parcels, the applicant would need to pave Seville Street, from Kellogg Drive to the northwest entrance along Seville Street near the railroad tracks for Parcel #1 and pave Harry Street from Tyler Street to the entrance at the southeast corner of Parcel #2; or 3) The applicant may circulate and attempt to secure a majority-paving petition for either Seville or Harry Streets in an effort to reduce paving costs.

**RECOMMENDATION:** Based on the information available prior to the public hearing, MAPD staff recommends the application be APPROVED, subject to platting within a period of one year.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Most of the adjacent properties are zoned "SF-6" Single-Family Residential and the adjacent businesses to the north are zoned "GC" General Commercial. The character of the neighborhood is one of mixed uses with commercial uses located to the north, a single-family home to the east, a municipal golf course to the south and a public park to the west.
2. The suitability of the subject property for the uses to which it has been restricted: The property is currently zoned "SF-6" and has been used in a non-conforming manner from the 40's through 90's. The site is also located adjacent to railroad tracks. The property is not suitably zoned today.
3. Extent to which removal of the restrictions will detrimentally affect nearby property. A variety of uses surround the site. There are retail businesses to the north, a public golf course to the south, a park to the west and a signal family residence to the east. There should be minimal detrimental impacts on the nearby properties for the proposed "LI" Limited Industrial recommended for this request. The purpose of the "LI" Limited Industrial district is to "promote industrial activities and development in a manner that is compatible with the built and natural environment." The primary location determinants are the characteristics of the individual use, nature of any emissions, the surrounding uses and zoning districts and the degree of compatibility with adjacent uses. Starting in the late 40's, the site served as the Walt Keeler Concrete Plant. The plant ceased operation in the late 90's and was subsequently purchased by Allen's Concrete, Inc. The site appears appropriate for a tractor-trailer truck freight terminal. The site could be developed with uses permitted in the "LI" Limited Industrial District.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The request is consistent with the Land Use Guide and with an objective stating: "Promote industrial activities and development in a manner that is compatible with the built and natural environment." The primary location determinants are the characteristics of the individual use, nature of any emissions, the surrounding uses and zoning districts and the degree of compatibility with adjacent uses.
5. Impact of the proposed development on community facilities: The projected impact on community facilities could be considerable. The proposed truck freight business will likely generate increased traffic.

**CARROLL** "This case came to you earlier and was sent back to you by the City Council. I think we have addressed some concerns they may have had. Earlier this Commission voted unanimously to recommend approval when it came before you. This is the old Walt Keeler's concrete plant. It was zoned 'SF-6' single-family residential, and we were recommending 'LI' Limited Industrial.

In the interim, between MAPC and this case going to the City Council, there were some neighborhood concerns. There were concerns that perhaps a concrete plant could go back in this location, so Councilmember Martz referred it back to you. In the interim we have talked to the applicant and with Marvin Krout's input, it has been agreed that the applicant will ask for Industrial Park zoning designation instead of Limited Industrial. I will explain the reasons why.

The applicant has no desire to put a concrete plant in there. Having the Industrial Park designation would mean that if he were to want a concrete plant in the future, he would need to secure a zone change request to 'LI' and in addition, secure a Conditional Use. This would give, I think, the neighbors some assurances that there would be no concrete plant and Bob Martz is comfortable with this Industrial Park designation, as I understand. I think the applicant and Mr. Martz have had conversation about this. I would answer any questions you might have."

**PLATT** "Is the application for 'LI' or for 'IP'?"

**CARROLL** "It is for 'IP'. The applicant and agents are here today to answer any questions you might have."

**LOPEZ** "As far as you are aware, they are in concurrence?"

**CARROLL** "Yes."

**MARNELL** "I need to mention that I was contacted on this by my appointer, Councilmember Martz, and it was relaying the same information that Barry has just related."

**GAROFALO** "Okay. Does anyone else want to divulge any contacts on this item? Okay, then we will hear from the applicant."

**ROYCE HARPER** "I live at 1729 South Sabin. I am making myself available this afternoon for any questions, doubts, or inhibitions about our intent and purposes of this project."

**GAROFALO** "The only question I can think of is are you in agreement with the 'IP' zoning?"

**HARPER** "Absolutely. I have had several conversations with Mr. Martz and Mr. Carroll, and of course, Marvin Krout. I think that we can easily comply with the zoning that is recommended to us."

**GAROFALO** "Are there any other questions of the applicant?"

**BARFIELD** "It is my understanding that this property is owned by Allen's Concrete?"

**HARPER** "That's correct."

**BARFIELD** "And you can give us an assurance that in the future there will not be any changes in plans or request for a concrete plant?"

**HARPER** "Should there be a concrete plant, it would be a substantial financial loss to me personally, and also from a corporate ownership standpoint. I would be substantially penalized if I were to allow that to happen. They have no intentions of maintaining the property under those conditions of a pour plant of any sort."

**MICHAELIS** "Just for clarification, you are buying the property from Allen's Concrete, is that correct?"

**HARPER** "Correct."

**GAROFALO** "Are there any other questions? Thank you. Is there anyone else to speak in favor of this application besides the applicant? Is there anyone here to speak in opposition? Okay, thank you."

**HARPER** "Thank you."

**GAROFALO** "We will bring it back to the Commission then."

**MOTION:** Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: Most of the adjacent properties are zoned "SF-6" Single-Family Residential and the adjacent businesses to the north are zoned "GC" General Commercial. The character of the neighborhood is one of mixed uses with commercial uses located to the north, a single-family home to the east, a municipal golf course to the south and a public park to the west. The suitability of the subject property for the uses to which it has been restricted: The property is currently zoned "SF-6" and has been used in a non-conforming manner from the 40's through 90's. The site is also located adjacent to railroad tracks. The property is not suitably zoned today. Extent to which removal of the restrictions will detrimentally affect nearby property. A variety of uses surround the site. There are retail businesses to the north, a public golf course to the south, a park to the west and a signal family residence to the east. There should be minimal detrimental impacts on the nearby properties for the proposed "LI" Limited Industrial recommended for this request. The purpose of the "LI" Limited Industrial district is to "promote industrial activities and development in a manner that is compatible with the built and natural environment." The primary location determinants are the characteristics of the individual use, nature of any emissions, the surrounding uses and zoning districts and the degree of compatibility with adjacent uses. Starting in the late 40's, the site served as the Walt Keeler Concrete Plant. The plant ceased operation in the late 90's and was subsequently purchased by Allen's Concrete, Inc. The site appears appropriate for a tractor-trailer truck freight terminal. The site could be developed with uses permitted in the "LI" Limited Industrial District. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The request is consistent with the Land Use Guide and with an objective stating: "Promote industrial activities and development in a manner that is compatible with the built and natural environment." The primary location determinants are the characteristics of the individual use, nature of any emissions, the surrounding uses and zoning districts and the degree of compatibility with adjacent uses. Impact of the proposed development on community facilities: The projected impact on community facilities could be considerable. The proposed truck freight business will likely generate increased traffic.) I move that we recommend to the governing body that the "IP" Industrial Park zoning be approved, subject to platting within 1 year.

**MCKAY** moved, **MARNELL** seconded the motion, and it carried unanimously (11-0).

5. **Case No. CON2000-00012** - Scott Hoskinson (Contract Purchaser/Applicant); Tom Holmes and George Holmes (Owners); Baughman Company, PA c/o Russ Ewy (Agent) request a Conditional Use to allow sand and gravel extraction on property described as:

The West Half of the Southwest Quarter of Section 15, Township 26 South, Range 1 West of the Sixth Principal Meridian, Sedgwick County, Kansas EXCEPT the South 735 feet thereof TOGETHER WITH the East 110 feet of the South 735 feet of said West Half except that part taken for the road. Generally located north of 53<sup>rd</sup> Street North.

**SCOTT KNEBEL**, Planning Staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

**BACKGROUND:** At the June 15, 2000 MAPC hearing, the MAPC voted to defer this case for two weeks to allow time to address issues regarding drainage, access, and redevelopment. At the time this report was prepared, the drainage issue has been resolved between planning staff and the applicant, and revised conditions of approval regarding drainage are reflected in the "Recommendation" section. The issues regarding access and redevelopment were not resolved at the time this report was prepared; therefore, they will need to be discussed at the MAPC hearing.

The applicant is requesting a Conditional Use to allow sand and gravel extraction on a 58.3-acre unplatted tract located north of 53<sup>rd</sup> Street North and east of Ridge Road. The subject property is zoned "RR" Rural Residential.

The attached site plan shows that the proposed sand and gravel extraction operation would create a 40-acre lake. The operational plan shows a fence around the perimeter of the entire property. Storage of equipment and material would not be permitted within 100 feet of the west property line and 50 feet of the north, south, and east property lines. The redevelopment plan shows that two single-family residences are proposed for the site, with one located east of the lake and the other located west of the lake.

The character of the surrounding area is agricultural with several existing sand and gravel extraction uses in the vicinity. The subject property is within a zone likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Also, information pertaining to wetlands from the Sedgwick County Soil Conservation District and Soil Survey of Sedgwick County indicates that the site does not contain soil commonly associated with wetlands.

The property east, west, and north of the site is zoned "RR" Rural Residential, and the property south of the site is zoned "SF-20" Single Family Residential. The properties to the east and west are used for sand and gravel extraction. The properties to the north and south are used for agriculture and are developed with farm-related single family residences.

Since the proposed lake uses most of the site and leaves little opportunity to develop the site with residential uses, the proposed use erodes the property's future tax base for Sedgwick County. Therefore, planning staff recommends conditions of approval which reduce the size of the extraction area and require a development plan showing one acre lots around the lake to be served by on-site water wells and septic systems.

**CASE HISTORY:** The site is unplatted.

**ADJACENT ZONING AND LAND USE:**

|                |                            |
|----------------|----------------------------|
| NORTH: "RR"    | Agriculture; Single Family |
| SOUTH: "SF-20" | Agriculture; Single Family |
| EAST: " " "RR" | Sand and Gravel Extraction |
| WEST: "RR"     | Sand and Gravel Extraction |

**PUBLIC SERVICES:** This site has access to 53<sup>rd</sup> Street North and Ridge Road, both two-lane paved section line roads. Primary access to the site will be from 53<sup>rd</sup> Street North, with emergency access only from Ridge Road. 53<sup>rd</sup> Street North has current traffic volumes of approximately 2,500 average daily trips, and Ridge Road has current traffic volumes of approximately 3,800 average daily trips. The 2030 Transportation Plan estimates that these volumes will increase to approximately 8,500 and 6,200 average daily trips, respectively. Municipal water and sewer services are not currently available to serve this site, and the site is located outside the 30-year urban service area. Use of the site for sand and gravel extraction and, subsequently, single-family residences can be supported by on-site water and sewer service.

**CONFORMANCE TO PLANS/POLICIES:** The Land Use Guide of the recently adopted update to the Wichita/Sedgwick County Comprehensive Plan identifies this area as appropriate for "Rural" development, which accommodates agricultural uses as well as other uses common in rural areas, such as sand and gravel extraction, that are no more offensive than normal agricultural uses. In the "Rural" category, large lot residential uses, as proposed in the redevelopment plan, should be developed with provisions for future water and sewer services.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

1. The applicant shall submit an operational plan for the area to be excavated. The area to be excavated shall be limited to a size that leaves sufficient land for future development of the site with one-acre lots around the lake. The extraction of sand and gravel on the site shall proceed in accordance with the revised operational plan approved by the MAPC. The perimeter of the lake excavation shall conform to the approximate size and shape indicated on the approved plan.
2. In order to assist in the enforcement of the operational plan, the applicant shall post a copy of the approved operational plan in the sand and gravel extraction office.
3. The applicant shall submit a revised development plan showing how the site could be subdivided into approximately one acre lots around the lake to be served by on-site water wells and septic systems.
4. Adjacent to the north, south, and west property lines of the application area, as indicated on the approved operational plan, a minimum 60-inch-high fence shall be constructed prior to the beginning of any extraction operation. A minimum 60-inch-high fence shall be constructed adjacent to the east property line at such time as the existing fence on the adjacent property to the east is removed. The fence and existing hedgerows shall be maintained at the locations depicted on the approved operational plan. Said fence shall be placed on steel posts, which are not less than 7 feet tall. The posts shall not be set more than 16 feet apart.

The fence shall be a minimum height of 60 inches and shall be of the following types of construction:

- A. A 48-inch-high or higher chain link fence with 3 or more strands of barbed wire; or
- B. A 48-inch-high or higher solid metal or solid masonry fence with 3 or more strands of barbed wire; or
- C. A 48-inch-high or higher wood fence which may have cracks or openings not in excess of 5% of the area of such fence, with 3 or more strands of barbed wire.

The term "barbed wire" shall mean any twisted wire with barbs spaced a minimum of 4 inches apart and placed at the top of the fence and gate at an angle not to exceed 160° facing away from the excavation.

5. The sand and gravel shall be extracted to at least a minimum depth of 6 feet below the normal water table, as determined by the Wichita-Sedgwick County Health Department.
6. To provide for bank stabilization and safety of future uses, the side slopes of the extraction shall be no more steep than five horizontal to one vertical.
7. Sufficient overburden material shall be retained in the area of extraction to grade and construct the banks so they are formed with overburden material rather than sand.
8. The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to the County's legal counsel, prior to the commencement of any sand and gravel extraction operation, providing that no foreign matter, such as rubbish, trees, car bodies, etc., shall be deposited on the application area or within the extraction area.
9. No commercial recreational activities, such as boating, fishing, skiing, etc., shall be permitted in the area, unless duly authorized under provisions of the Unified Zoning Code and amendments thereto.
10. All slopes shall have vegetative covering consisting of a perennial drought-resistant grass or combination of grasses which will permit the establishment of sod cover to help prevent erosion.
11. To minimize blowing soil in this area, overburden shall not be removed more than six months in advance of the lake being expanded into an area, unless the ground is covered within the next planting season with a perennial drought-resistant grass or combination of which will permit the establishment of sod cover to help prevent erosion. As part of the required operational plan, the applicant shall divide the site into 2 distinct areas for the purpose of showing phased excavation over time. The plan would show which area was to be excavated and at what time.
12. The storage of equipment or stockpiling of sand is not permitted closer than within 50 feet of the north, south, and east property lines and 100 feet of west property line.
13. Nothing in the approval of this request shall be construed to permit a contractor's material and equipment storage yard. Within 60 days after completion of the sand extraction operation, the land surrounding the lake shall be properly graded and planted with a vegetative cover. Also, all stockpiled sand, sand pumping and related equipment shall be removed from the subject site.

14. The approval of the Conditional Use is for a period not to exceed five years from the date of approval by the MAPC and/or the Board of County Commissioners and subject operation is to cease after that period of time with all equipment and materials associated with the operation removed from the premises.
15. Hours of operation for the sand extracting business shall be limited to 6:00 a.m. to sunset.
16. All on-site water and sewerage facilities shall be approved by and constructed to the standards of the Wichita-Sedgwick County Health Department.
17. Any water wells needed to operate the facility must comply with the Water Well Construction Standards contained in Article 30 of the Kansas Department of health and Environment rules and regulations.
18. The applicant shall make the site available to the Wichita-Sedgwick County Health Department for the installation and management of groundwater monitoring wells.
19. Any on-site storage of fuels or chemicals must be approved by the Wichita Sedgwick County Health Department.
20. A drainage plan shall be submitted to and approved by the Sedgwick County Bureau of Public Works prior to starting the sand and gravel extraction. All of the area included within the fenced sand extraction operation shall be graded in accordance with the approved drainage plan. Additional requirements, such as a public drainage easement, a floodway reserve, or a covenant authorizing the site for use as a detention storage facility for public drainage purposes, may be required as a condition of approval for the drainage plan.
21. The applicant shall be responsible for maintaining all operational roads in a sand or graveled condition and shall apply water or other acceptable dust retardant to minimize blowing dust. The owner of the property shall be responsible for minimizing blowing dust from the site.
22. The applicant shall obtain and maintain all applicable local, state, and federal permits necessary for the sand and gravel extraction operation.
23. The applicant shall dedicate by separate instrument right-of-way for 53<sup>rd</sup> Street North and Ridge Road pursuant to Article 7-201(H) of the Wichita-Sedgwick County Subdivision Regulations.
24. Any violation of the conditions of approval shall declare the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The character of the surrounding area is agricultural with several existing sand and gravel extraction uses in the vicinity. The subject property is within a zone likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Also, information pertaining to wetlands from the Sedgwick County Soil Conservation District and Soil Survey of Sedgwick County indicates that the site does not contain soil commonly associated with wetlands.
2. The suitability of the subject property for the uses to which it has been restricted: The site is currently used for agriculture and this use could continue given the agricultural character of the area.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Any detrimental affects should be minimized by the various setback requirements and operational restrictions required as conditions of approval.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the recently adopted update to the Wichita/Sedgwick County Comprehensive Plan identifies this area as appropriate for "Rural" development, which accommodates agricultural uses as well as other uses common in rural areas, such as sand and gravel extraction, that are no more offensive than normal agricultural uses. In the "Rural" category, large lot residential uses, as proposed in the redevelopment plan, should be developed with provisions for future water and sewer services.
5. Impact of the proposed development on community facilities: The development of this property as a sand and gravel extraction operation should not have a significant impact on community facilities. On-site water and sewer services will be required to serve this site.

**KNEBEL** "The Planning Commission heard this case two weeks ago and deferred it regarding issues of drainage, access, and redevelopment of the site. The staff report that you have before you indicates that the issues regarding drainage have been resolved between the applicant and staff of the Planning Commission and the Sedgwick County Public Works Department. If you will look at Condition No. 20, that is the language that we have developed, which I think we intend to use in the future for these types of applications regarding drainage and it basically indicates that the County Engineer has several options regarding how to address off-site drainage, whether it be an easement or a covenant, or even the designation of the site as a floodway. I don't see the applicant here, but they indicated to me that they were in agreement with that on the phone.



The other issues regarding redevelopment of the site and access to the site, I understand that there is a site plan that the applicant has which I have not seen yet, but I will allow him to address those issues and hopefully you will be able to work your concerns regarding those."

**GAROFALO** "Have any Commissioners been contacted on this?"

**OSBORNE-HOWES** "I was contacted by Tom. We discussed the issues. It was just a brief conversation. None of that information would change my mind."

**WARNER** "I was also contacted by Tom. We discussed the entrance and the exit on Ridge Road. The requirement for the lots around there."

**MICHAELIS** "The same for me."

**GAROFALO** "Does anyone else want to declare contact? Does anyone have any questions of Scott before we hear from the applicant? Okay, then we will hear from the applicant."

**RUSS EWY** "I am with the Baughman Company, agent for the applicant. To be brief, we are passing around the revised site plan, which will take into account several of the items we discussed last time. We have agreed to abide by Condition No. 1, which showed a revised redevelopment plan, showing how we can lot the property."

Johnson arrived at 1:40 p.m.

As well, we have resolved the drainage with both the Bureau of Public Services and the Planning staff. The only two items that we have to discuss today from our standpoint would be Condition No. 14, which we talked about during the last meeting. We are asking for a time period of 10 years instead of 5 years. We explained the reasoning for that. The only other item that we are here to discuss from our standpoint is the access road serving the plant site. As you will recall, the last meeting, we had the most affected property-owner speak in opposition to the proposed access point onto 53<sup>rd</sup> Street North. The revised operational plan shows what we would consider somewhat of a compromise position.

We understand that there is the potential of having truck-traffic that will be using Ridge Road, although we feel that most truck traffic will utilize 53<sup>rd</sup> Street, heading east. So what we show are two driveways that would allow truck traffic to either gain access to the plant site via Ridge Road as well as 53<sup>rd</sup> Street North. We feel that although we would be building two separate roads that this would at least have the effect of diluting whatever truck traffic may be imposing on the property owners around 53<sup>rd</sup> Street North.

Also, if you recall from the original site plan, we have relocated the 30-foot access drive along 53<sup>rd</sup> Street North to a point of approximately 70 feet west of our east property line, maximizing the distance between that and the property owner to the east. In addition, we are in agreement to pave this stretch, this 705 feet with a crushed asphalt type of surface in an effort, obviously, to avoid having any type of dust or blowing dirt impacting these neighbors. I believe that is it. I will answer any questions that I may."

**GAROFALO** "Russ, where is the access mentioned here?"

**EWY** "I am not sure the access is specifically addressed in the list of conditions. The condition is that we have to abide by the operational plan as graphically presented. The only other condition that we are asking for a modification to would be item No. 14, dealing with the time period of operation."

**GAROFALO** "Okay. Maybe you need to tell us why you think you need 10 years."

**EWY** "Again, as I mentioned last time, this is a moderately large area of excavation, depending on the state of development throughout the county. Pumping sand is going to be related to that type of construction activity. These types of conditional uses have typically had about a 10-year time period and we feel that in an effort to avoid, in our opinion, needlessly coming back for an amendment to allow an extension of time, we feel that we could simply have a 10-year time frame and operate within that time frame."

**GAROFALO** "What about accesses? Show us where you want access?"

**EWY** "The original proposal has always been to have a plant site located in the back, in the east mid-point of the property. Obviously, this is an attempt to keep it as far away from the public, as well as surrounding property owners. It also is placed in that location due to the soil's testing that we have done on the site. This is the least available area in order to extract sand. We originally proposed an access road coming down the east property line, straight to 53<sup>rd</sup> Street North. In this revised plan, we showed the same access point, except it is moved over to the western portion of this panhandle and we show a secondary access point out to Ridge Road."

**WARREN** "Russ, that doesn't show up on this site plan. Do you have another site plan?"

**EWY** "It shows up on the operational plan, not the redevelopment plan."

**MARNELL** "Russ, we had a similar request for 10 years a couple of weeks ago and it was expressed around the table, because it states 10 years from the start of extraction because it is pretty open-ended. What terms on outside time would you be willing to accept on this?"

**EWY** "A few weeks ago, we discussed not only the extension of time from 5 years to 10 years, but also perhaps, as the other Conditional Use heard later that afternoon, perhaps the option of beginning when the clock begins. The 10 years starting from the point that we actually began excavation versus 10 years from the approval of the County Commission."

**MARNELL** "It seems like what we ended up with in that discussion was this 10 years from the start of extraction, but extraction starts within 3 years."

**EWY** "That was the other case. I have Scott Hoskinson here from Central Sand Company, who would be able to better indicate a rough time when excavation will be begin on this site. Scott, when do you think you would be able to move to this site?"

**GAROFALO** "Why don't we have him come up to podium?"

**EWY** "Okay."

**GAROFALO** "State your name, please."

**SCOTT HOSKINSON** "Hello. I am thinking in a year and a half to 2 years tops before excavation would begin."

**MARNELL** "So you wouldn't have difficulty with putting on a requirement so that this entire permit would end in 13 years under any condition?"

**HOSKINSON** "Correct."

**MARNELL** "Okay, thanks."

**PLATT** "Russ, I have to be a little concerned that you are putting the gate on one drive along Ridge Road and the gate on the other one is up in the property. It seems to me that this might be telling us that you are really going to use a 53<sup>rd</sup> Street entrance."

**EWY** "That is a good question. We would be more than happy to place that gate closer to, or at least in an adequate throat length to store the adequate number of trucks. You're right, we didn't take into account any type of queuing that would occur. We will definitely entertain making that change on the operational plan."

**GAROFALO** "Are there any other questions?"

**KROUT** "Would you go over again, on the access, either one of you, why Ridge Road exclusively does not work? And also, I think there was some discussion at the last meeting about the fact that the owner has additional property with 53<sup>rd</sup> Street frontage and couldn't they move it closer to Ridge Road, away from the house that is adjacent to the east?"

**EWY** "I think we originally began by taking a look at where we were putting the plant site. As I explained, the reasons for locating our plant site where it is, that creates a situation where the closest shot to a public road is obviously 53<sup>rd</sup> Street North.

In addition to the fact that Ridge Road has approximately 50 percent more traffic per day, and that fact that our truck traffic will not necessarily be going south, as we discussed last time, on Ridge Road. So you are looking at more of a direct routing of our truck traffic. I will let Scott explain the reason for requiring whatever property he was able to acquire from the property owner to the south."

**HOSKINSON** "It is my feeling, and for a safety factor, I am also contracted to do the Conditional Use permit across the road that was approved here two weeks ago. That factor, being able to transfer equipment or whatever is needed from site to site instead of having to come clear out around Ridge Road, down back to 53<sup>rd</sup> Street and back, is quite a bit quicker. And you don't have the large equipment on the road as long or anything, for a hindrance or traffic block."

**KROUT** "What about the issue of moving it further to the west on 53<sup>rd</sup> Street?"

**HOSKINSON** "The road? Let's see..." (Did some discussing with Ewy).

**EWY** "Scott had originally attempted to purchase 200 feet of width along that line before the property owner re-negotiated down to 110 feet that he was willing to sell. So we have a property owner that would not be willing to agree to that."

**HOSKINSON** "He just let me have the bare essentials, I guess."

**GAROFALO** "Are there any other questions of the applicant? Okay, thank you. Is there anyone else to speak in favor of this zoning change? Is there anyone to speak in opposition?"

**JANET HOSKINS** "I live at 1780 3100<sup>th</sup> Avenue in Chapman, Kansas. I spoke to this board two weeks ago and expressed concern about the location of the road and the way the operation was presented. To refresh your memories, I own the house directly east of the proposed driveway. My lot is 300 feet wide with the house sitting on the east central part of the lot. If the company placed that road where they plan on it, even if it was in the west part of the corridor, it would still be less than a football field length from my house. I don't feel this is right. Large trucks are noisy. They vibrate the ground and should not be that close to a resident's house. I understand and all the neighbors I have talked to are upset and concerned about this road dumping another sandpit out onto 53<sup>rd</sup> Street. They are living with three sandpits now and do not want to deal with the traffic from a fourth.

Ridge Road is the most logical choice for the road. It gives direct access to the bypass. The bypass is 1-1/2 miles down Ridge Road, but it is nearly 5 miles going to the east on 53<sup>rd</sup> and then south on Meridian. Heavy trucks should take the shortest route to a main road. Ridge Road is the way the truck traffic should exit our community. I see no problem with using 53<sup>rd</sup> Street for equipment or an emergency exit, but I do see a problem of running sand trucks, and topsoil trucks back and forth from one site on one side of 53<sup>rd</sup> to the other. That just doubles the traffic by my house.

The decision today really comes down to what is right. Is it right for the sandpit to place their road in a location that is most convenient for them and ignore the wishes of the community, or is it right for the community to request that a road be placed in a safer location, which produces the least disturbance for them? The community and I urge you to request that the road be moved to Ridge Road, at least the main entrance, and use the 53<sup>rd</sup> Street entrance as an emergency only or just to move equipment back and forth, but not sand trucks and not top soil trucks. Regardless of where the roads are, they should be covered with asphalt to reduce the blowing dirt and sand for the surrounding neighbors. Thank you."

**GAROFALO** "Are there any questions?"

**MICHAELIS** "Ma'am, for a point of clarification, you gave your address as Chapman, Kansas, so you don't live there?"

**HOSKINS** "I don't live there currently, no. I am planning on coming back to there."

**MICHAELIS** "Okay, thank you."

**GAROFALO** "Is there anyone else to speak in opposition? Okay, then you have two minutes rebuttal, Russ."

**EWY** "I will be brief. One thing that I didn't mention during my presentation was another reason why we placed access onto 53<sup>rd</sup> Street. As you know, we received approval for a sand extraction operation south of this property. That is also run by Mr. Hoskinson. Obviously, we want to, from an operational standpoint, have those access points as close as possible to one another. We feel that the approximate 70 trips that this site will generate in any given day will be spread out over the time period set by this Conditional Use and will not have an appreciable impact on local traffic. Again, we would ask that the operational plan that we show here today, showing the two access points will even defuse that 70 trips per day from this stretch of 53<sup>rd</sup> Street North. I would be more than happy to answer any other questions."

**WARREN** "Did you suggest that the road surface would either be gravel or reground asphalt?"

**EWY** "Re-ground asphalt is what we are proposing along that south 705 feet, up to the gate. And I might add that we build these roads with more of a rock and clay base, which, by its own nature, will not blow. But we will agree to this additional step."

**MICHAELIS** "Russ, are these trees that are shown here, are they there now?"

**EWY** "Yes."

**MICHAELIS** "I apologize for not having been out there, but is this a pretty significant hedgerow barrier?"

**EWY** "Scott brought along some pictures for your reference. It is a pretty mature stand of trees. There are gaps, as you will be able to see from these pictures. I spoke with the property owners last Friday in an effort to see whether or not asphalt milling paving on this property, as well as the re-location of the drive would have any impact on their opinion of this location of the driveway. They clearly expressed that although we proposed doing these modifications, that it did not change, as you heard Janet say, their opinion of the location of that drive. We also felt that we could plug those gaps in the trees with additional plantings, if necessary."

**KROUT** "Russ, you know on the case on the south side of 53<sup>rd</sup> Street a couple of weeks ago, Commissioner McGinn asked for a revision of the hours of operation to 7:00 p.m. instead of sunset. I suspect if this goes forward, I think she will be discussing it again. Is your applicant prepared to maybe make that accommodation today, also?"

**EWY** "We discussed that the last time, I think, and I will sure let Scott correct me if I am wrong. We discussed that and there is an obvious difference between the two applications. The south application site is obviously associated with this sand operation; however, it is not a public sand extraction operation. We won't be running additional commercial carriers out of that site. That is simply for Central Sand Company. So it is very much a secondary type of use. So we had no problems limiting the hours of operation from 6:00 a.m. to 7:00 p.m. I believe that is what the Commission approved."

Obviously, there is a substantial number of people that live around that particular sand plant. We felt that this being our primary plant site that we would be desiring to maintain the standard condition of hours operation to 6:00 a.m. to sunset. So we would be discussing that. I am not sure that we would be as willing to agree to that as we were on the last site, for those reasons."

**GAROFALO** "Are there any other questions? Okay, thanks, Russ. Okay, what is the pleasure?"

**MOTION:** Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The character of the surrounding area is agricultural with several existing sand and gravel extraction uses in the vicinity. The subject property is within a zone likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Also, information pertaining to wetlands from the Sedgwick County Soil Conservation District and Soil Survey of Sedgwick County indicates that the site does not contain soil commonly associated with wetlands. The suitability of the subject property for the uses to which it has been restricted: The site is currently used for agriculture and this use could continue given the agricultural character of the area. Extent to which removal of the restrictions will detrimentally affect nearby property: Any detrimental affects should be minimized by the various setback requirements and operational restrictions required as conditions of approval. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the recently adopted update to the Wichita/Sedgwick County Comprehensive Plan identifies this area as appropriate for "Rural" development, which accommodates agricultural uses as well as other uses common in rural areas, such as sand and gravel extraction, that are no more offensive than normal agricultural uses. In the "Rural" category, large lot residential uses, as proposed in the redevelopment plan, should be developed with provisions for future water and sewer services. Impact of the proposed development on community facilities: The development of this property as a sand and gravel extraction operation should not have a significant impact on community facilities. On-site water and sewer services will be required to serve this site.) I move that we recommend to the governing body that the application be approved as presented subject to these three conditions:

1. Item No. 14 be amended to 10 years from the date of commencement of operations, provided however that said commencement started in not to exceed two years.
2. That the modification be accepted on the opening to Ridge Road as a secondary inlet/outlet.
3. That the 705-foot of road going to 53<sup>rd</sup> Street North be surfaced with re-ground asphalt.

**WARREN** moved.

**MICHAELIS** "I would like to ask the maker of the motion if you would be willing to amend that to three years. I would like to see us, as a Commission, have some consistency when we do these, and if we are approving three years for one, I think we ought to approve three years for this."

**WARREN** "Are you talking about the date of commencement?"

**MICHAELIS** "Well, the way you described it, only instead of saying two years, say three years."

**WARREN** "Well, I said that his tenure would begin at the commencement of operations. Then what else are you suggesting?"

**MICHAELIS** "I am saying that he has to commence operations within three years from the date of approval."

**WARREN** "Oh, okay. I don't have any problem with that."

**MICHAELIS** seconded the motion.

**JOHNSON** "Marvin, I guess I am curious about where the road actually is on this 705 feet. They made the option of moving it to the west. That is not in the notes. Should that be part of the motion?"

**KROUT** "I think it is per the operation of the plan, so the plan ties them down."

**JOHNSON** "Okay."

**OSBORNE-HOWES** "Just a question for Marvin. Part of this operational plan that they submitted looked like they allowed for more lots, maybe. Is this enough to satisfy your request on that?"

**KROUT** "We didn't see this until just at the same time you did, and we haven't developed a policy on what percentage of land ought to be left as high ground for future development, but I think off hand I would say that we will be looking for at least another 10 acres to be left as high ground."

**GAROFALO** "Are there any other questions?"

**WARNER** "I have a question of the motion maker. Does your motion include the redevelopment plan?"

**WARREN** "Well, yeah, the motion includes the operational plan."

**WARNER** "No, I mean the redevelopment plan. It's Item No. 1 in the recommendations. It is different than the operational plan."

**WARREN** "Yeah, I don't have any problem with that. Does that satisfy what we asked for?"

**WARNER** "Marvin, explain that to him."

**KROUT** "I am saying that we would recommend more land be reserved and not mined for a lake area, but that is a decision that you need to discuss as a commission is whether or not the lake surface is now redevelopment area."

**WARREN** "With this application, we have no criteria, though, to insist upon that. It may be what we want, but what do we use as grounds to make this a condition of approval?"

**KROUT** "Well, for example, there was a 60-acre parcel across the street that you approved with a 20-acre lake and here you are approving a 60-acre parcel with a 40-acre lake."

**WARREN** "I understand that, but I don't know that that 20-acre lake is particularly our demand. I think that is the way it was."

**KROUT** "That's right. Commissioner Warren, the applicant's agent said they would agree to preserve the existing trees and the tree row and to plant additional trees where there are not trees, and a tree row along that east property line."

**WARREN** "Did you say 705 feet?"

**KROUT** "Yes."

**WARREN** "So what you are asking for is additional screening on that 705 feet on the east side?"

**KROUT** "Yes. And some additional plantings per the landscape plan approved by the Planning Department."

**WARREN** "All right, I will amend my motion."

**OSBORNE-HOWES** "The applicant also, I think, given the question that was asked over here earlier, they said that they would move the gate. Was that part of the motion?"

**EWY** "Commissioner Platt made a good point. Having an access gate where it is located would not allow for appropriate queuing of vehicles, so we would be more than willing to adjust the gate location for that entrance to a location acceptable to staff."

**OSBORNE-HOWES** "Would the maker of the motion add that?"

**WARREN** "I would amend my motion to affect that change and any other agreements that the applicant has made with staff."

(Laughter here)

**KROUT** "Or may make in the future. That's pretty funny."

**AMENDED MOTION:** I move that we recommend to the governing body that the application be approved, subject to the following:

1. The applicant shall submit a revised operational plan for the area to be excavated that locates the gate along Ridge an appropriate distance to the east from the Ridge right-of-way to permit queuing of vehicles on the applicant's property rather than the right-of-way. The extraction of sand and gravel on the site shall proceed in accordance with the revised operational plan approved by the MAPC. The perimeter of the lake excavation shall conform to the approximate size and shape indicated on the approved plan.
2. In order to assist in the enforcement of the operational plan, the applicant shall post a copy of the approved operational plan in the sand and gravel extraction office.

3. The gaps in the existing hedgerow along the east side of the access road to 53<sup>rd</sup> Street North shall be filled with trees planted according to a landscape plan approved by the Director of Planning.
4. Adjacent to the north, south, and west property lines of the application area, as indicated on the approved operational plan, a minimum 60-inch-high fence shall be constructed prior to the beginning of any extraction operation. A minimum 60-inch-high fence shall be constructed adjacent to the east property line at such time as the existing fence on the adjacent property to the east is removed. The fence and existing hedge rows shall be maintained at the locations depicted on the approved operational plan. Said fence shall be placed on steel posts which are not less than 7 feet tall. The posts shall not be set more than 16 feet apart.

The fence shall be a minimum height of 60 inches and shall be of the following types of construction:

- A. A 48-inch-high or higher chain link fence with 3 or more strands of barbed wire; or
- B. A 48-inch-high or higher solid metal or solid masonry fence with 3 or more strands of barbed wire; or
- C. A 48-inch-high or higher wood fence which may have cracks or openings not in excess of 5% of the area of such fence, with 3 or more strands of barbed wire.

The term "barbed wire" shall mean any twisted wire with barbs spaced a minimum of 4 inches apart and placed at the top of the fence and gate at an angle not to exceed 160° facing away from the excavation.

5. The sand and gravel shall be extracted to at least a minimum depth of 6 feet below the normal water table, as determined by the Wichita-Sedgwick County Health Department.
6. To provide for bank stabilization and safety of future uses, the side slopes of the extraction shall be no more steep than five horizontal to one vertical.
7. Sufficient overburden material shall be retained in the area of extraction to grade and construct the banks so they are formed with overburden material rather than sand.
8. The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to the County's legal counsel, prior to the commencement of any sand and gravel extraction operation, providing that no foreign matter, such as rubbish, trees, car bodies, etc., shall be deposited on the application area or within the extraction area.
9. No commercial recreational activities, such as boating, fishing, skiing, etc., shall be permitted in the area, unless duly authorized under provisions of the Unified Zoning Code and amendments thereto.
10. All slopes shall have vegetative covering consisting of a perennial drought-resistant grass or combination of grasses which will permit the establishment of sod cover to help prevent erosion.
11. To minimize blowing soil in this area, overburden shall not be removed more than six months in advance of the lake being expanded into an area, unless the ground is covered within the next planting season with a perennial drought-resistant grass or combination of which will permit the establishment of sod cover to help prevent erosion. As part of the required operational plan, the applicant shall divide the site into 2 distinct areas for the purpose of showing phased excavation over time. The plan would show which area was to be excavated and at what time.
12. The storage of equipment or stockpiling of sand is not permitted closer than within 50 feet of the north, south, and east property lines and 100 feet of west property line.
13. Nothing in the approval of this request shall be construed to permit a contractor's material and equipment storage yard. Within 60 days after completion of the sand extraction operation, the land surrounding the lake shall be properly graded and planted with a vegetative cover. Also, all stockpiled sand, sand pumping and related equipment shall be removed from the subject site.
14. The approval of the Conditional Use is for a period not to exceed 10 years from the beginning of operation, which shall not exceed 3 years from the date of approval by the MAPC and/or the Board of County Commissioners. Subject operation is to cease after that period of time with all equipment and materials associated with the operation removed from the premises.
15. Hours of operation for the sand extracting business shall be limited to 6:00 a.m. to sunset.
16. All on-site water and sewerage facilities shall be approved by and constructed to the standards of the Wichita-Sedgwick County Health Department.
17. Any water wells needed to operate the facility must comply with the Water Well Construction Standards contained in Article 30 of the Kansas Department of health and Environment rules and regulations.

18. The applicant shall make the site available to the Wichita-Sedgwick County Health Department for the installation and management of groundwater monitoring wells.
19. Any on-site storage of fuels or chemicals must be approved by the Wichita Sedgwick County Health Department.
20. A drainage plan shall be submitted to and approved by the Sedgwick County Bureau of Public Works prior to starting the sand and gravel extraction. All of the area included within the fenced sand extraction operation shall be graded in accordance with the approved drainage plan. Additional requirements, such as a public drainage easement, a floodway reserve, or a covenant authorizing the site for use as a detention storage facility for public drainage purposes, may be required as a condition of approval for the drainage plan.
21. The applicant shall be responsible for maintaining all operational roads in a sand or graveled condition and shall apply water or other acceptable dust retardant to minimize blowing dust. The owner of the property shall be responsible for minimizing blowing dust from the site.
22. The applicant shall obtain and maintain all applicable local, state, and federal permits necessary for the sand and gravel extraction operation.
23. The applicant shall dedicate by separate instrument right-of-way for 53<sup>rd</sup> Street North and Ridge Road pursuant to Article 7-201(H) of the Wichita-Sedgwick County Subdivision Regulations.
24. The south 705 feet of the access road to 53<sup>rd</sup> Street North shall be surfaced with ground asphalt.
25. Any violation of the conditions of approval shall declare the Conditional Use null and void.

**WARREN** moved, **MICHAELIS** seconded the motion.

**HENTZEN** "Now, what have we agreed to on the gate? Where is it going to be?"

**GAROFALO** "Are we talking about the original gate?"

**HENTZEN** "Yeah. It shows on here (indicating) right there,..."

**KROUT** "He is talking about the Ridge Road gate."

**HENTZEN** "Oh, the Ridge Road gate, okay, I'm sorry."

**GAROFALO** "Is there any other discussion? Okay, we have a motion to approve, with several amendments."

**VOTE ON THE MOTION:** The motion carried unanimously with 12 votes in favor.

**KROUT** "Commissioners, that decision is final unless there is a valid, written protest that is filed within 14 days of this decision, in which case it goes on to the County Commission."

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6. **Case No. CON2000-00018** - Bay Le (Owner), Alma Rivas and Pedro Banuelos (Applicants) request a Conditional Use to allow the sale of used cars on property described as:

Lots 118 and 120, Block 4, Orme & Phillips Addition. Generally located at Broadway and Morris (1017 South Broadway).

**BARRY CARROLL**, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

**BACKGROUND:** The applicants are requesting a Conditional Use to permit used car sales on a platted ¼-acre tract of land. They indicate a desire to offer up to 15 vehicles for sale. This property is zoned "LC" Limited Commercial and is located north of Morris, on the westside of South Broadway (see map). Woven wire fencing surrounds the application area. Access to the site is from South Broadway and from an alley located to the west. Currently the site is developed with a two-story building. A jewelry repair shop is located on the first floor with an apartment on the second floor. The jeweler operating the first floor business resides in the upstairs apartment. The occupant will vacate the site should the Conditional Use be approved.

The property north of the application is a vacant lot and zoned "LC" Limited Commercial, the property to the south is a residence and it is zoned "LC" Limited Commercial; to the east is a vacant lot and is zoned "LC" Limited Commercial; to the west are residential houses and zoned "MF-18" Multi-Family.

Outdoor vehicle and equipment sales in the "LC", Limited Commercial, district is permitted if: the location is contiguous to a major street; visual screening of areas contiguous to residential zoning is provided; storage and display areas shall be paved with concrete, asphalt or other comparable material; outdoor lighting shall employ cut-off luminaries and shall be mounted at a height not exceeding one-half the distance from the neighboring lot unless evidence is shown that the light source is not visible from the neighboring lot; no noise amplification system projecting human voices or music shall be permitted if the music or voices can be heard within any residential zoning district located within 500 feet of the site; no repair work shall be conducted except in an enclosed building; and no body or fender work is permitted.

Code required parking is at the rate of one space per 500 square feet of building area, plus two spaces for the first 10,000 square feet of area used for sales, display and storage, plus one space per 10,000 square feet thereafter. This site contains approximately 4,250 square feet of sales, display and storage area and approximately 900 square feet of building area. Four parking spaces would be required. The applicants are showing four spaces (see site plan). It also appears that there is not much room for landscaping due to existing paving.

**CASE HISTORY:** The current site was platted as the Lee's Addition in 1882.

**ADJACENT ZONING AND LAND USE:**

|        |                                  |                   |
|--------|----------------------------------|-------------------|
| NORTH: | "LC" Limited Commercial          | Vacant lot        |
| EAST:  | "LC" Limited Commercial          | Vacant lot        |
| SOUTH: | "LC" Limited Commercial          | Residential House |
| WEST:  | "MF-18" Multi-Family Residential | Residential House |

**PUBLIC SERVICES:** South Broadway is a four-lane arterial street with estimated traffic volumes of 10,878 trips per day. Water/sewer and other municipal services are provided to the site.

**CONFORMANCE TO PLANS/POLICIES:** The Land Use Guide of the Comprehensive Plan identifies this property as "commercial." The plan contains an objective which states: "Confine highway-oriented, auto-related and non-retail commercial uses to a limited number of urban areas, such as portions of Kellogg, Broadway, the CBD fringe, and other similar areas." There are two car sales lots in the two blocks north and one lot in the same block of the application area.

**RECOMMENDATION:** Based on the information available prior to the public hearing, MAPD staff recommends the application be APPROVED, subject to the following conditions:

1. In addition to uses permitted in the "LC" Limited Commercial district, the site shall be limited to sales of used cars.
2. The vehicle sales lot shall be developed in accordance with the site plan, which shows the location for all spaces that will be used for customer parking and the storage or display of vehicles. The required customer and employee parking shall not be used for the display of vehicles. The applicants shall comply with the Landscape Ordinance.
3. All parking, storage and display areas shall be paved with concrete, asphalt or similar surface. Parking barriers shall be installed along all perimeter boundaries adjacent to streets, except at driveway entrances or where fences are erected, to ensure that parked vehicles do not encroach onto public right-of-way.
4. No portable signs, and no temporary display signs are permitted, including the use of commercial flags, banners, pennants, streamers, pinwheels, string lights, search lights, bunting and balloons.
5. There shall be no use of elevated platforms for the display of vehicles.
6. No noise amplification system projecting human voices or music shall be permitted if the music or voices can be heard within any residential zoning district located within 500 feet of the site.
7. No outside storage of salvaged vehicles or parts shall be permitted in association with this use.
8. Per City Engineering standards, contingent dedication of additional right-of-way shall be granted by separate instrument. The contingency shall be a determination made by the City Engineer that the additional right-of-way is necessary for improvements to Broadway.
9. Any violation of the conditions approved, as a part of this request, shall render the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Most of the area is zoned "LC" Limited Commercial and the adjacent neighborhood to the east is zoned "MF-29" Multi-Family Residential. The character of the neighborhood is one of mixed zoning, vacant lots, business and residential uses.



2. The suitability of the subject property for the uses to which it has been restricted: This site is currently zoned "LC", Limited Commercial and is used as jewelry repair shop and residence. Both are permitted uses. Vehicle sales are permitted only by Conditional Use in the "LC" district. The site will retain its zoning whether the request is approved or not. It is possible to continue to use the site as zoned or other retail sales uses permitted by the current zoning would be allowed.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The adjacent properties to the north, south and east are zoned "LC" Limited Commercial. The property to the west is residential and is zoned "MF-29." A variety of uses are already permitted on the properties zoned "LC" and "MF-29." Minimal detrimental effects are anticipated from the proposed Conditional Use recommended for this request.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The Land Use Guide of the Comprehensive Plan identifies this property as "commercial." The plan contains an objective which states: "Confine highway-oriented, auto-related and non-retail commercial uses to a limited number of urban areas, such as portions of Kellogg, Broadway, the CBD fringe, and other similar areas."
5. Impact of the proposed development on community facilities: With approval of this project, the projected impact on community facilities is minimal.

**CARROLL** "This case came before you on June 15. There was considerable discussion about the size of the lot at that time. The case was deferred and the applicant and agent were directed to revise the site plan. The applicant and the agent are both present. The applicant has revised the site plan, and you were given a copy of that. I think it is pretty self-explanatory. If you have any questions, I would be glad to respond."

**GAROFALO** "Are there any questions of Barry?"

**LOPEZ** "Is there an access point on the west or the south end there? The last time, on the videos, the access was up here (indicating)."

**CARROLL** "There is an alley to the west. This would be the ingress off of Broadway."

**LOPEZ** "Yeah. Is there one there currently?"

**CARROLL** "Yes, there is a fence, but they are taking out the old fence, so they would come in (indicating) and then exit."

**GAROFALO** "Are there any other questions of Barry? All right, then we will hear from the applicant."

**ALMA RIVAS** "Like Barry said, it is pretty self-explanatory. I made a revised site plan so that you could see it and it would be a lot easier. I know that one of the main concerns two weeks ago was parking. Probably the customers would park on the north side of this lot. As you can see, there is more than enough parking for customer parking. Again, we want this to be a really small car lot, so I don't think parking would be a problem. As you can see here, there is more than enough parking. Earlier, I had said that we are planning on having 10-15 cars in the lot. If you have any questions, I will be glad to answer them."

**GAROFALO** "Are there any questions of the applicant?"

**BARFIELD** "This address is about halfway down the block; right in the middle of the block?"

**RIVAS** "Yes."

**BARFIELD** "Isn't that going to bring quite a bit of traffic through the alley?"

**RIVAS** "No."

**BARFIELD** "You don't think so? It says here that it is a one-way. All of the people going in off Broadway will exit through the alley."

**RIVAS** "Right. Entrance would be through Broadway and exit through the alley. We have gone there several times and I don't think there is a problem with traffic."

**BARFIELD** "If your neighbors don't disagree."

**LOPEZ** "The used cars that you are going to display, are they going to be in the back part of the lot or up front?"

**RIVAS** "They are going to be along the lot."

**LOPEZ** "Yeah, behind it, to the back?"

**RIVAS** "Right. Toward the back."

**GAROFALO** "Are there any other questions of the applicant? Thank you, ma'am. Is there anyone else to speak in favor of this application? Is there anyone to speak in opposition?"

**GARY HOWARD** "I a partner in the law firm of Slape and Howard, which owns the property immediately to the north of the proposed site. The site is from this point (indicating) to this point. As you can see, there is no driveway. The original site plan that was proposed to this Commission two weeks ago said that there would be no ingress off of Broadway whatsoever, other than maybe some parking places. You can see that now there is no driveway, really, in there, other than is blocked to the building. The distance between this sidewalk and this building is so minimal that they are going to have to, in order to get this driveway in, which is now proposed to the south of this building, they are going to have to have street repairs, obviously. I guess that come up under another Commission. I'm not sure.

Our position is that this simply is too small of a site. This is a 50-foot wide lot, which is approximately not more than 2 or 3 feet bigger than this room. The proposed now is for ingress only through Broadway and then egress out the alleyway. That alleyway is a buffer between the residential district and the Broadway businesses along that west side of Broadway. There isn't anything on the site plan letting you know how wide that alley is. That alleyway is a minimal width. I don't believe that two vehicles could pass each other safely in that alleyway. There are children who play in that alleyway all of the time, ride or whatever.

So what we have is a drive-through car lot, I guess, where the only way to get in is to drive in, and you are not supposed to come in from the alley, and obviously you shouldn't back up onto Broadway. So the only way is to drive all the way through and exit through the alley. I wish somebody would do some studies on the width of the alley and how cars are going to go back and forth across that. I have heard of shade-tree mechanics, but I haven't heard of shade-tree car lots. That is what this thing is. This thing is no bigger than that.

If it is determined that this Conditional Use be granted, two things we very much ask for. One is that originally, at the last hearing, the proponent indicated that they were considering paving that. As you can see from the location of where that fence is and behind the building to the west, none of that is paved at all. It is all vacant ground right now. The plan had indicated that it should be used as asphalt or gravel, or some comparable mixture. The applicant had indicated that she was going to perhaps use some crushed rock. Please don't let her use crushed rock there. Make it a hard substance where we are not going to have a lot of dust and other items.

Also, the application does say no banners. We would also request no banners. Our position is that it is simply way too small to fit a car lot into this location and if the car lot don't fit, don't Conditional Use it, is our position. Thank you."

**GAROFALO** "Are there any questions of the speaker?"

**PLATT** "Sir, where do you park for your office?"

**HOWARD** (Indicating) "This vacant lot here is ours. Behind this building there is parking for us."

**PLATT** "How do you get to that parking?"

**HOWARD** "Through the alleyway. We also have parking to the north that is a parking lot."

**GAROFALO** "Is there anyone else to speak in opposition?"

**CONNER LINDSAY** "I live at 1002 South Broadway, which would be across the street from this and down to the corner. I live at the corner of Gilbert and Broadway. We use this residence. We understand that this is a commercial street, but our view is that we have car lots all up and down Broadway. You just let one go in in the next block. This lot is awful small to consider putting in a car lot. You can see that the cars all have to be put in the back. They are not visible from Broadway. We are just concerned if another car lot goes in in our area. Thank you."

**GAROFALO** "Are there any questions of the speaker? Okay, thank you sir. Next speaker."

**DALE SLAPE** "I am Gary Howard's partner. You heard from me last week. I just wanted to clarify one thing. You asked about the parking lot for our building. It was indicated that that is behind our building. That is for our staff. They come in and they leave once or twice a day. When they come in, they come in off of Gilbert to the north and just drive a few feet into the alley and then boom, there they are parked for hours. That is not where our clients park. Our clients park to the north of our building. There is ample parking; there are two driveways there for our clients and for people who come and go constantly all day long to park. So we do have a concern about the alley because it is constantly filled with children. That is a residential area behind us. Whether that is good or bad, we can't control it. There is where the kids go out to play, running up and down the alley with their trikes.

The other concern we have about this car lot is not only that but that the cars are all displayed behind the customer parking. Now the cars will be completely hidden off of Broadway. As I discussed last week with you, the only logical reason to put this thing on Broadway is to make it known that you have cars for sale. To display your product. The only display of the product is going to be through the alley. So you are not just going to have egress through that alley, you are not going to have people pulling in to Broadway, neatly driving through and exiting on the alley, you are going to have them driving up and down this alley from all over Wichita, parking in that alley to see the cars that are exhibited because

they sure as heck can't park on Broadway. That is just going to be a fact of life no matter how many drawings we examine.

When people drive up and look at cars, they usually like to drive along and see what is available and park their cars and get out and look. This is just too small for the space, so there will be an infringement upon the property around it, including the alley."

**HENTZEN** "Is the alley sand or pavement?"

**SLAPE** "It is pavement."

**HENTZEN** "Is it a one-way or two-way alley?"

**SLAPE** "It is not labeled at all. There is traffic going both directions."

**GAROFALO** "Are there any other questions of the speaker? Thank you, sir. Next speaker. Lois."

**LOIS ANN NEWMAN** "Good afternoon Mr. President and members of the Commission. I am the President of the South Central Progressive Association, which is a neighborhood association that covers the area between the Kellogg flyover, Pawnee, Hydraulic, and the river. I can tell you that the neighborhood association agrees with the previous speakers. We are against this car lot.

I want to thank you for hearing this Conditional Use for 1017 South Broadway. We in south central Wichita have worked hard to clean up our neighborhood, make it better and safer for our families, businesses, schools and churches. A little over a year ago, former CPO Council III heard a similar case in the 1700 block of South Broadway, across the street from Commerce Bank. The Council was informed that the neighborhood association did not wish south Broadway used as a used car lot street, and the Council voted unanimously with the neighborhood association. However, the MAPC has allowed the car lot. They now place 'for sale' signs out on the parking, which is illegal. Today, believe it or not, coming down here was the first time that I missed seeing the parking sign out there. In the past few months, you approved the empty Town and Country building and parking as a used car lot. That is the 900 block on south Broadway.

This request for 1017 South Broadway appears to be too small for even a small business and it will need an alley approved to do property care for cars, the lot and the parking space for customers. There is no street parking on South Broadway and none is allowed in the alleys. So let's be careful what we call progress and not create an item with the decision that creates constant observation and notification to Central Inspection and law enforcement that needs extra enforcement visits. Please deny the Conditional Use. Thank you."

**GAROFALO** "So are you representing the association?"

**NEWMAN** "Yes. And Conner lives in what is an historic approved house for the City only. If it was a national historic, it would be within 500 feet of this, but it isn't. Sorry about that."

**GAROFALO** "Are there any other questions of Lois? Thank you, Lois. Is there anyone else to speak in opposition? Okay, then the applicant has two minutes of rebuttal."

**RIVAS** "Again, two weeks ago, it seemed that the concern was the parking. I have explained with this other site plan how parking would be taken care of and now it seems that the alley is a problem. That alley can be used. It is public and can be used for the public. Another concern was that people don't have any room to park to look at the cars. I am hoping that people don't drive by looking at the cars. We know that is not very safe. That is why the parking will be right here so that they can come in and park their cars and look at the cars that they want.

I think you mentioned something about the neighborhood being cleaned up. I don't see how a car lot is going to mess it up. I think business is a great opportunity. One of the reasons we chose this place is because all of the car lots are right there on Broadway. I can't have a car lot at my house. I just hope that you take into consideration that all of the parking is there. It is available and I really don't see how this is going to mess up the community. I read the letter written by somebody that was opposed to it. It is a really nice neighborhood and I truly believe that. We drive by there all of the time, my husband and I, but I don't see how a car lot is going to mess up the community."

**WARREN** "You had suggested a limited number of cars that you propose or anticipate. What was that number?"

**RIVAS** "Fifteen to twenty. There is more than enough parking."

**WARREN** "Would you be agreeable, as a condition of this Conditional Use Permit to limit the number of cars to 15, say?"

**RIVAS** "That would not be a problem."

**MICHAELIS** "I would just like to ask, for your understanding, because I don't know if you realize or not that cars don't turn at right angles like you have shown here. We will say, hypothetically, that you have a car displayed on the north side and one displayed on the south side and you have taken up almost 40 feet of the 50 feet, which gives you a 10 foot lane down there."

**RIVAS** "They could be lined up diagonally."

**MICHAELIS** "Okay. What I am getting at is that the way this is presented, and it might have behooved you to have somebody professional to do this to take that in to account. If somebody comes down in the middle here and parks, all of a sudden you've got no way out for anybody. I just wanted to note that."

**KROUT** "I guess I should say that I haven't seen this drawing before today either, but the Traffic Engineer did review it and work with the applicant on this plan. One of the problems seems to be that this is kind of tight and kind of congested and it does put the traffic onto the alley."

When I was sitting here a couple of weeks ago, I was drawing up a plan that would basically have only a drive along the office area. It would have your customer parking instead of two spaces in back of the customer parking, you would have four spaces and then you would draw a line at that point and everything behind that would be display cars. That would allow you to have two ways in and out on Broadway, and it would open up the site. It would push your display cars back so that you would lose about three of the spaces, or five of the spaces, but it would allow for much more typical circulation and open up the area and provide some opportunity for landscaping around the building and the edge of the property on the other side. Is that something that you talked about or considered?"

**RIVAS** "I was actually advised to do it a one-way."

**KROUT** "You were advised by the Traffic Engineer?"

**CARROLL** "It was suggested, let's put it that way."

**KROUT** "Okay."

**WARREN** "Mr. Chair, I think what Marvin is looking at, and looking at this plan, if you were to take out Site Nos. 16,17 and 18, which if you limited it to 15 you could do, then I think you would have the potential, at least, for egress and ingress off of Broadway."

**KROUT** "Right."

**WARREN** "You might still have a secondary opening on the alley. It is unfortunate that we don't have a professional drawing here, but I am like Marvin, I can see a workable solution to ingress and egress off of Broadway, subject to limiting the number of cars on the lot."

**KROUT** "I will pass the drawing around that I was talking about."

**RIVAS** "If I may, just a comment on that. When I first applied for this, I asked if I needed to have a professional do this and I was told that I did not have to. That is why I did not have a professional do it."

**OSBORNE-HOWES** "Will there be a fence on the west side of the property?"

**RIVAS** "Yes, there is a fence."

**OSBORNE-HOWES** "Is there a fence there now?"

**RIVAS** "Yes."

**BARFIELD** "The more I look at this, the more problems I have with it. Let's face the facts. We won't be doing the City, the residents in that neighborhood, nor the applicant a favor if we approve this. It simply won't fit. Now the last question that was asked and answered really raises my concern. If there is a fence on the back of that property, then how in the world is somebody going to see who is coming out if someone is driving through that alley way and someone is wanting to exit. That poses a problem."

**RIVAS** "It is an opening fence. It opens up. It just closes up."

**BARFIELD** "I understand that, Ma'am, but if there is a vehicle coming through that alley way and there is a vehicle about to exit your parking lot, how would they see each other?"

**RIVAS** "It is going to be one-way traffic. Just like a drive-through."

**GAROFALO** "Are there any other questions of the applicant? Okay, thank you. We will take it back to the Commission."

**BARFIELD** "I am going to say this. I am having quite a bit of difficulty understanding why staff would approve something like this. I don't see where they have taken into consideration that we are asking for problems from every aspect. No. 1, there is no parking on Broadway, so you are going to anticipate traffic congestion on Broadway, someone trying to enter this property."

No. 2, this lot is so small, and even if you are only talking about 10 vehicles, you could very easily have somebody in there to look at an automobile, someone else wanting to go in there to purchase an automobile. You would have traffic congestion in there. They are showing it as a one-way, which clearly says that there is not enough room for two vehicle lanes.

No. 3, we are asking to turn a residential alley into a commercial use, which I strongly object to. And in the thing of the fencing on the back, I think it is clearly not in our best interest to approve this as it is presented today. I was not here two weeks ago, so I don't know what transpired at that time, but from what I am looking at here today, I have serious concerns with this. I can't vote to support this."

**MICHAELIS** "Two weeks ago, I expressed those same concerns and I said I was opposed to it then, and I am still going to be opposed to it because I just don't think it is a workable plan in this location. I agree with Commissioner Barfield. I think we are asking for problems if we do it and so therefore I can't support it."

**OSBORNE-HOWES** "I would still like to hear more discussion because I am not sure how I am going to vote, but I will say that my mind is clicking through pictures of lots of car lots, including a lot of the car lots that we have approved in here over the last couple of years, whether I voted for them or not that are not bigger than this. So I guess I am struggling with this."

**WARREN** "I have concerns based on what all of these people have said to us and what Commissioners Barfield and Michaelis have said, but the thing we have to understand too is that this is zoned properly. All we are asking for is a Conditional Use permit. Even though somebody might decide that this is too small, we have no criteria in our Subdivision Regulations or the Zoning Ordinance that says that an automobile sales lot has to be a minimum number of feet. That is where we run into a problem. It is not what we think is reasonable or rational on a free market, free enterprise thing; it is what can we use as grounds to deny this application?

I would submit, with these counselors both being here, we have no grounds to deny this application because we don't like it or we don't like the people who are putting it in, or we don't like something. I don't think those are grounds. We just lost a case over on West Street similar to this. We did not have grounds enough to deny the application. We don't just have unlimited police powers to say 'we don't like this, let's don't do it'. We've got to have rationale and reason for denying it. I don't think we've got it."

**PLATT** "I hate to say it, but I agree with my fellow Commissioner. I don't like this as a lot for commercial activity, but I agree with Commissioner Warren that that is not my responsibility to make a decision on that. As all of you know, I don't like used car lots, but again, Wichita and other cities say that used cars lots are acceptable and necessary. So we have them.

What we do have, in our Comprehensive Plan and in our other regulations are some statements about that we should locate used car lots along arterial streets, major streets, and that we should tend to group them in areas where we already have used car lots. This one clearly fits those criteria. Broadway is a commercial street. Broadway has lots of used car lots. If we are going to have more used car lots, this is one place where I will vote for them.

The alley has been subject to a lot of discussion. I drove up and down it this morning. That alley supports all of the commercial activities to the east of it on Broadway. That is what it is there for. They all use it. It is a commercial alley. These folks have every right to use it just like all of the rest of the commercial businesses along Broadway. So I am going to have to support the request."

**JOHNSON** Since it is on Broadway and we have approved other car lots on Broadway, with Marvin's revised plan, it meets parking requirements for the building that is there. Now, the number of cars that could legally be shown there, I don't know if there should be a number or whatever, but I can see where you could put 10 to 14 cars on there. I guess if I had a car lot, I would just about as soon have a small one as a large one, which was one of the concerns of the neighborhood.

The other thing is that the gentleman that lived across the street was concerned about seeing these cars, but apparently these are going to be in the back so they won't be as visible as if the building was torn down and they were sitting right on Broadway. I think that helps the situation.

The last thing is that it is a public alley and it is a paved public alley. There aren't that many alleys in the city that are paved and I think we are fortunate in this case that that is paved so that what traffic there is going to be there is going to be on a paved alley rather than a dirt alley."

**MOTION:** Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: Most of the area is zoned "LC" Limited Commercial and the adjacent neighborhood to the east is zoned "MF-29" Multi-Family Residential. The character of the neighborhood is one of mixed zoning, vacant lots, business and residential uses. The suitability of the subject property for the uses to which it has been restricted: This site is currently zoned "LC", Limited Commercial and is used as jewelry repair shop and residence. Both are permitted uses. Vehicle

sales are permitted only by Conditional Use in the "LC" district. The site will retain its zoning whether the request is approved or not. It is possible to continue to use the site as zoned or other retail sales uses permitted by the current zoning would be allowed. Extent to which removal of the restrictions will detrimentally affect nearby property. The adjacent properties to the north, south and east are zoned "LC" Limited Commercial. The property to the west is residential and is zoned "MF-29." A variety of uses are already permitted on the properties zoned "LC" and "MF-29." Minimal detrimental effects are anticipated from the proposed Conditional Use recommended for this request. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The Land Use Guide of the Comprehensive Plan identifies this property as "commercial. "The plan contains an objective which states: "Confine highway-oriented, auto-related and non-retail commercial uses to a limited number of urban areas, such as portions of Kellogg, Broadway, the CBD fringe, and other similar areas." Impact of the proposed development on community facilities: With approval of this project, the projected impact on community facilities is minimal.) I move that we recommend to the governing body that the request be approved, subject to the following:

1. In addition to uses permitted in the "LC" Limited Commercial district, the site shall be limited to sales of used cars.
2. The vehicle sales lot shall be developed in accordance with the site plan, which shows the location for all spaces that will be used for customer parking and the storage or display of vehicles. The required customer and employee parking shall not be used for the display of vehicles. The applicants shall comply with the Landscape Ordinance.
3. All parking, storage and display areas shall be paved with concrete, asphalt or similar surface. Parking barriers shall be installed along all perimeter boundaries adjacent to streets, except at driveway entrances or where fences are erected, to ensure that parked vehicles so not encroach onto public right-of-way.
4. No portable signs, and no temporary display signs are permitted, including the use of commercial flags, banners, pennants, streamers, pinwheels, string lights, search lights, bunting and balloons.
5. There shall be no use of elevated platforms for the display of vehicles.
6. No noise amplification system or music shall be permitted if the music or voices can be heard within any residential zoning district located within 500 feet of the site.
7. No outside storage of salvaged vehicles or parts shall be permitted in association with this use.
8. Per City Engineering standards, contingent dedication of additional right-of-way shall be granted by separate instrument. The contingency shall be a determination made by the City Engineer that the additional right-of-way is necessary for improvements to Broadway.
9. Any violation of the conditions approved, as a part of this request, shall render the Conditional Use null and void.
10. The applicant will submit a revised site plan with ingress from and egress onto South Broadway subject to the approval of MAPD staff.

**JOHNSON** moved, **LOPEZ** seconded the motion.

**LOPEZ** "I would like to ask the maker of the motion to look at the revised site plan that Marvin has."

**JOHNSON** "I did."

**LOPEZ** "Would you include that in the motion?"

**JOHNSON** "Well, I think they have some options of doing it a couple of different ways, but at least we have seen a plan that does work and I would like for staff to get with the applicant and work out the best plan that they see to utilize the property properly. I guess the last thing is is where last week we had an applicant and our concern was about getting a plan, and then she goes to the City of Wichita Engineering Department and works with them and this is what they get. I don't think we ought to really come down real hard on them anyway."

**MARNELL** "Marvin, do we have to have a finished plan to approve a Conditional Use?"

**KROUT** "Well, I think you should. I don't think you should leave it open-ended. There is a good chance that this case is going to go to the City Council and I think as much as we can clear up at this point, we ought to. I do want to point out, and I guess the Traffic Engineer probably was trying to also be conscious about the fact that there was a light pole that

would have to be relocated if you were going to provide a two-way drive. So maybe it was that part of the consideration that he was trying to work with her on to avoid having to relocate the utility pole."

**CARROLL** "Yes, I think that was part of it."

**JOHNSON** "Should the motion be to approve it with a parking plan approved by staff?"

**KROUT** "I would rather that you tell us what you think is an appropriate plan, and it is either the plan they submitted, which was approved by the Traffic Engineer, or it is a plan that would provide for two-way circulation and require the utility pole to be relocated."

**LOPEZ** "In that aspect, I would agree with you that your plan of two-way circulation was a better plan, and if the utility pole needs to be relocated, then that is just part of the motion that we make, but I would agree that we need to have two-way circulation on and off of Broadway even though there is access to the alley and it can be utilized, Broadway should be ingressed and egressed."

**KROUT** "Is that acceptable to the maker of the motion?"

**JOHNSON** "I guess my only concern is that let's say we come up with a plan and somebody doesn't park a car on the lot exactly the way that plan is. Can they pull the Conditional Use permit on account of that?"

**KROUT** "If there were serious and continuing violations, yes."

**WARREN** "Is the motion, then, that we limit the number of cars to 14 and that a new revised plan be approved by staff, based on the preliminary plan made up by Marvin, is that what you are saying?"

**JOHNSON** "Yes, that is what I was hoping to happen."

**WARREN** "Okay."

**LOPEZ** "That would include the relocation of that utility pole."

**WARREN** "Well, it may or may not. We are not demanding two way, we are only hoping that they get that option."

**KROUT** "I think you need to decide whether or not your motion is for the plan that was submitted or for a revised plan with two-way circulation."

**LOPEZ** "I seconded it and I will be in support of it if part of it is that that utility pole is going to have to be relocated."

**JOHNSON** "How is that going to change anything?"

**LOPEZ** "It is going to allow for ingress and egress."

**MCKAY** "All you have to say is that it be two-way and that is part of the circumstances."

**JOHNSON** "Okay, we will go with two way."

**MARNELL** "I would like to hear from the applicant on this. I know that we brought it back to the bench, but it is not their plan anymore, it is, I guess Commissioner Johnson's plan."

**JOHNSON** "No, Marvin's plan."

**MARNELL** "This is a small business and I think they have a right to have a small business. Everything doesn't have to be Jumbo sized. I think they have every legal right to put that kind of a business in that location, but I don't think we need to impose a business plan on them, and maybe what we are imposing is not going to work."

**KROUT** "That is fair enough."

**MARNELL** "This was one that came from staff that they worked with that the staff said works, but I think we should hear from the applicants."

**GAROFALO** "Okay, but let's hear from Commissioner Barfield before we get the applicant up here."

**BARFIELD** "Commissioner Warren talked about the fact that we don't have the right to deny this. I think, in addition to considering the zoning matter, there is another matter here that is strong to me, and that is public safety. I don't think we should compromise public safety on this case or any other case regardless of how large or small. Every car lot I can think of that is on South Broadway between Kellogg and I believe Mt. Vernon is located on a corner lot where there is clear visibility."

In this case, we are in the middle of the block, and once again, I would go back to that alley way, and there will be no visibility for a vehicle that is exiting that lot. The other thing we have to be concerned with is that we are talking about the number of vehicles, and there is no provision, I see nothing in here about disabled vehicles. I have never seen a used car lot that did not have, at some point in time, disabled vehicles. Where are we going to park those? Where are those going to be located? I think we have some things to consider here other than just the fact that do we have the right to deny this, based on legal grounds. I think we do. I think public safety certainly will be compromised as presented today. Now if they want to come back with some different plans, I might reconsider, but today I think we have a duty not to approve this."

**MICHAELIS** "With all due respect to my fellow Commissioners because we sit here every week and do just exactly what you are saying on this one, but I really think we are doing ourselves an injustice if we sit here and sketch things out and make motions and make changes on an hourly basis. We have spent two weeks now on this project and we still don't know if we have a workable thing with the applicant. It is certainly not workable, I think, with the majority of the body here. I just think we are beating our heads here. I mean, this has to be done and done correctly, and presented correctly and done in the proper procedure. We can't approve things on sketches, which we sit here and do."

**OSBORNE-HOWES** "I am in a position where I am agreeing with almost everybody. Not quite. I guess two quick comments. First of all, one of the problems that I oftentimes have with car lots is that there is an expectation that people will have to drive slowly by to see what is on display and that could cause problems with traffic safety from the street. Here we have an example of a different kind of car lot, and that is through some type of great marketing, bringing people onto the car lot without expecting to display first, as people would trust the owners enough to come in and look and would not only protect the neighbors, especially those across the street or adjacent, or close by so that they wouldn't have to look at all of these used cars on display and see traffic driving by on Broadway slowly."

So from that prospective, I kind of like the concept, honestly. I would personally feel a little more comfortable, although maybe this isn't fair to the applicant, to ask for another delay with the expectation that they would bring back something acceptable. I am really not trying to be bureaucratic, but I am uncomfortable with approving something that is drawn real hastily and sketched, especially because down the road there may be a car lot I really don't like. We can sketch and God only knows what it will end up being.

So I would feel most comfortable if we would defer this for two more weeks. But I sure would like to hear from the applicant."

**WARREN** "I certainly agree with Commissioner Marnell. What we have here is a workable site plan that is completely legal, and one of which we could approve, but I think these people might modify it if we could give them a good idea of how they might be able to do it."

In regard to Commissioner Barfield's statement, with all due respect, Commissioner, if we would use as our grounds, public safety on a lot that we can put a bar on, we can put a restaurant on, with cars coming in and out, if we would use that, I think we would be laughed out of a court. I can see no public safety issue here having to do with traffic or anything else that wouldn't be far worse based on the existing commercial zoning of that lot. So I don't think it is grounds. I don't think we have grounds to use public safety."

**GAROFALO** "Okay, let's get the applicant up here."

**RIVAS** "Like I said, this was drawn like this because that is what I was advised to do. I would not have a problem at all sitting down and talking to whomever I need to talk to about revising this. That would not be a problem for me."

**GAROFALO** "So you wouldn't be opposed to another deferral for two weeks?"

**RIVAS** "No, that is fine."

**WARREN** "I am opposed to that."

**GAROFALO** "Well, that is fine. Okay, we have a motion."

**MCKAY** "I would like to make a substitute motion because the applicant doesn't care if we defer it for two weeks. Between now and the next two weeks, she should get together with staff and come to a compromise on the plot plan."

**MICHAELIS** "What about the Engineer?"

**MCKAY** "She did the Engineer. You don't like it. Planning wants it one way and the Engineer wants it someplace else. The poor lady is stuck."

**SUBSTITUTE MOTION:** That the case be deferred for two weeks.

**MCKAY** moved, **MARNELL** seconded the motion.

**GAROFALO** "I think we have had plenty of discussion on this already, so let's go ahead and vote on the substitute motion."



**VOTE ON THE SUBSTITUTE MOTION:**  
vote (6-6).

The vote resulted in a moot

**OSBORNE-HOWES** "Can I make sure, is that a motion that will approve it?"

**KROUT** "The original motion would approve it, but subject to a revised plan with two-way circulation."

**WARREN** "And 14 cars."

**OSBORNE-HOWES** "You know what I am going to say. On recommendation No. 6, could we just say no noise amplifications?"

**JOHNSON** "Yes. I would add that."

**OSBORNE-HOWES** "Thank you."

**GAROFALO** "Does the second approve?"

**LOPEZ** "Yes."

**VOTE ON THE MOTION:** The motion carried with 9 votes in favor (Platt, Lopez, Osborne-Howes, Johnson, Warren, Marnell, Warner, McKay and Hentzen) and 3 opposed (Michaelis, Barfield and Garofalo).

**KROUT** "Again, this is the final act by the Planning Commission unless there are written protests that are filed within 14 days of today's hearing, in which case it goes to the City Council."

7. **Case No. PUD 2000-0001** - Brian O'Shaughnessy and Robert Struble (Owners); Triple crown, Inc., John Greenstreet (contract purchaser); Poe and Associates, Kenny Hill (agent) request a Planned Unit Development on property described as:

The Northwest Quarter of Section 35, Township 27 South, Range 2 East of the 6th P.M., Sedgwick County, Kansas. Generally located on the southeast corner of Harry and 127<sup>th</sup> Street East.

**DALE MILLER**, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

**BACKGROUND:** The application area is the 160.8 acres located at the southeast corner of Harry Street and 127<sup>th</sup> Street East. The request is for a Planned Unit Development (PUD) which would permit the further development of the site with single-family residences and equestrian uses (horse stable, riding academy, indoor and outdoor equestrian events, animal care, general, and similar equestrian related activities). The proposed PUD depicts three parcels. Two of the parcels (Parcels 1 and 2) would be developed with 159 single-family lots (approximate gross density of 1 unit per acre). The typical lot size per unit depicted on the plan submitted with the application is approximately 14,000 square feet. The proposed PUD contains a provision, which would allow the developer the option to increase density up to 206 dwelling units with a minimum lot size of 6,000 square feet (approximate gross density of 1 unit per 33,000 square feet). Parcel 1 is 94.7 acres. Parcel 2 is 22.2 acres.

Parcel 3 is 43.9 acres and would be the site for most of the equestrian activities – stables, corrals, arenas, animal care. The equestrian facilities would be available to lot owners as well as the public. The maximum floor area proposed for the Parcel 3 is 100,000 square feet. (Currently the site is developed 38,400 square feet of buildings.) Maximum height of buildings would be 45 feet. A 35-foot building setback is proposed. Parking is proposed to be: one space for every three spectator seats; one space for each 1,000 square feet of arena area; and one space for each 250 square feet of office space. Outdoor arena lighting shall not be permitted after 10:00 P.M. and indoor arena lighting shall not be permitted after 11:30 P.M. The proposal is to limit the site to a maximum of 100 horses. (Staff is recommending that this number be modified to account for riding events and foals. See L in recommendation section.) Signage is proposed to be the same as is permitted in the "LC", Limited Commercial district.

Staff recommends that signage for Parcel 3 be limited to that permitted in the "GO" General Office district. The "LC" district permits each individual business to have a ground or pole sign as large as 300 square feet, so long as 150 linear feet separate them. In this case, the applicant has 1800 linear feet so up to a total of 1,440 square feet of signage would be permitted (80 percent of the frontage is used to calculate allowed square footage), resulting in 4- 300 square foot signs plus another 240 square foot sign. Height is restricted to 25 feet tall unless the applicant does not utilize all the allowed signage. For each sign he does not put up, sign height can be increased by 5 feet up to 35 feet maximum. Building signs of 20 per cent of the building elevation or a maximum of 400 square feet per sign and restricted to three signs with 150 feet of parking adjacent to the building elevation; and off-site signs where permitted. Portable signs may also be permitted. The "GO" district permits an individual business one ground or pole sign 32 square in size. If there are multi-tenants, then signage is restricted to 24 square feet per tenant, with a maximum of 96 square feet of signage. Height is

restricted to 20 feet.

The site is laid out with reserves that permit riding trails to be located throughout the development. Interior roadways would be maintained privately. Access to the site is proposed to be restricted to one point on Harry and two on 127<sup>th</sup> Street. A contingent street dedication is depicted providing future connection to the east. The site plan depicts 114 parking spaces. The parking rate proposed is: 1 space for every three spectator seats; 1 space for every 1000 square feet of arena area; and 1 space for every 250 square feet of office.

The site is currently zoned "LC", Limited Commercial and "SF-20", Single-family Residential, and developed with a 32 stall horse stable, parade arena (30,000 square feet), barn (8,400 square feet) and various outdoor riding areas, corrals and pastures. The code permits this use as a "use by right" in the "SF-20" district if the property owner owns all of the horses. None of these facilities currently have seating. These facilities are unused today, and have been vacant for approximately two years. There are two points of access, one each for each bordering street. The entire site is fenced.

Nearby properties are predominately zoned "SF-6", Single-family Residential or SF-20, Single-family Residential. The northeast and southwest corners are zoned "LC", Limited Commercial. Land west of 127<sup>th</sup> Street not zoned "LC" is zoned "SF-6", Single-family Residential. Land east of 127<sup>th</sup> Street not zoned "LC" is zoned "SF-20", Single-family Residential. All surrounding land uses are either residential, agricultural or vacant.

Without the PUD, the applicant would need to obtain the following approvals in order to develop the site. To board horses not owned by the property owner or to operate a riding academy would require a Conditional Use permit. "Animal Care, General" is not a permitted use in the "SF-20" district, but it is permitted with a Conditional Use in the "LC" district. Residential lots smaller than 20,000 square feet in size would require annexation into the city, which results in an "automatic" rezoning to "SF-6", Single-family.

The applicant is advised that if there is a possibility that a "neighborhood swimming pool" will be desired for this development, a site plan should be submitted with the plat of this PUD. Otherwise, an amendment to the PUD will be required to place a pool in the neighborhood. The applicant should also be advised that the city's landscape ordinance would be effective for Parcel 3 upon annexation.

**CASE HISTORY:** In 1990 "SF-6", Single-family Residential zoning was approved for this site. The case was closed due to failure to complete platting.

**ADJACENT ZONING AND LAND USE:**

NORTH: "LC", Limited Commercial, "SF-20", Single-family Residential and "SF-6", Residential; large-lot residential  
SOUTH: "SF-20", Single-family Residential; row crop  
EAST: "SF-20", Single-family Residential; vacant, possibly pasture  
WEST: "SF-6", Single-family Residential; Large-lot residential

**PUBLIC SERVICES:** Harry is a county two-lane paved arterial. 127<sup>th</sup> Street is a Minneha Township two-lane, asphalt mat arterial. Traffic volume for 127<sup>th</sup> Street between Harry and Mount Vernon was 203 average daily trips in 1997. The volume for this segment is projected to increase to 5,000 by 2030. Harry, between 127<sup>th</sup> Street and ½ mile east of 127<sup>th</sup> Street carried 4,190 trips per day in 1997. The volume for this segment is projected to increase to 7,895 by 2030. The residential portion of the proposed development will generate between 1,590 and 2,060 average daily trips. When riding events are held, higher than normal traffic would occur, depending upon the level of participation. However with appropriate access control and road improvements (left-turn lanes and decel lanes) obtained when the property is platted, adequate traffic improvements will exist. County Engineering will request at platting that a guarantee to bring 127<sup>th</sup> Street up to County road standards and a left turn be provided. For Harry, County Engineering will request a guarantee for a right-turn and left-turn bay on Harry.

Sewer service will be provided by the County's Four-Mile Creek facility as there is a sewer main located north of Harry, along the creek. The applicant will probably need to obtain an easement across private property to gain access to the main.

A 16-inch water line exists in the Harry Street right-of-way adjacent to the application area. Water department officials indicate they would expect this site to guarantee the extension of service along 127<sup>th</sup> Street.

Long range transportation plans indicate a future need for a "southeast by-pass". The logical route for this bypass would be to extend K-96 directly south from the Kellogg / K-96 interchange, located one mile north of the application area, through the application area and then curve the road southwest and west at some point to connect with K-15 near Mulvane and I-35 near Haysville. The opportunity to develop this roadway is fast closing due to the pattern of existing and proposed developments. Staff is suggesting that if this PUD is approved, a) a 300 foot building setback should be provided along the west property line (east of the existing 127<sup>th</sup> Street right-of-way), and b) the proposed development in the northwest corner of the PUD be redrawn to show potential access to Harry, should access to 127<sup>th</sup> Street be cut off someday by the bypass. This building setback would preserve a critical segment of a corridor that would enable the "southeast bypass" to remain a strong possibility as opposed to a missed opportunity. This limitation would impact Lots 1 through 7 of Parcel 2. If it is later determined that a bypass is not needed or not in this alignment, then the building line can be revised.

**CONFORMANCE TO PLANS/POLICIES:** The "Sedgwick County Development Guide" depicts this site as a "new growth area". "New growth areas" are those primarily undeveloped readily accessible properties, which either have urban services, or those services can be extended in a cost-effective standpoint.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

- A. The development of this property shall proceed in accordance with the development plan as recommended for approval by the Planning Commission and approved by the appropriate governing body, and any substantial deviation of the plan, as determined by the Zoning Administrator and the Director of Planning, shall constitute a violation of the building permit authorizing construction of the proposed development.
- B. Any substantial deviations in the development plan shall be submitted to the Planning Commission and Governing Body for their consideration and denial or approval.
- C. The transfer of title of all or any portion of the land included within the PUD does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land and be binding upon the present owners, their successors and assigns, unless amended.
- D. All property included within this PUD shall be platted within one year after approval of this PUD by the Governing Body, or the case shall be considered denied and closed. The resolution or ordinance shall not be published until the plat has been recorded with the Register of Deeds.
- E. Prior to publishing the ordinance or resolution establishing the PUD, the applicant shall record a document with the Register of Deeds indicating that this tract includes special conditions for the development of this property.
- F. When necessary, the applicant shall submit revised copies of the PUD to the Metropolitan Area Planning Department within 30 days after approval of this request by the Governing Body, or the request shall be considered denied and closed.
- G. All development on Parcels 1 and 2 shall be developed in conformance with the development standards contained in the "SF-6" Single-family Residential district, except that the front yard setback in Parcel No 2 shall be 20 feet. Development on Parcel 3 shall conform to the following development standards: 35 foot setbacks, maximum building area of 100,000 square feet; maximum building height of 45 feet; signage as permitted in the "GO" district; and parking as described above.
- H. Animal wastes from areas where the animals shall be gathered as needed and as weather permits to prevent flies and odor. The gathered wastes shall be stored and disposed of consistent with County Health Department recommended best management practices.
- I. The horse stable facility shall be maintained free of rodent harborage, including but not limited to improperly stored materials, enclosed partition walls and wooden floors closer than 12 inches of the ground. Grain or protein feed shall be stored in tightly covered rodent-proof bins. Use shall be made of rodenticide and insecticides for control of rodents and flies. The horse stable facility shall be cleaned at least once a week, or more often if necessary, to prevent or control odors, fly breeding and rodent infestation.
- J. Use shall be made of Health Department approved soil sterilants and herbicides or other effective means for the control of weeds and grass around the horse stable and associated corral areas.
- K. The horse stable and any associated board fences or wooden horse shelters shall be protected from deterioration by painting. Painting is not required for redwood, cedar or chemically and pressured treated lumber. The stable building, fences and shelters shall be constructed of dimensioned building materials.
- L. The maximum number of horses to be stabled on the property shall be 100, plus any foals born to stabled mares. After one year from the date of foaling, yearlings will count towards the maximum number of horses permitted on the site. Up to 150 additional horses may be stabled overnight in connection with riding events.
- M. The buildings and structures associated with the horse facility shall be open to unannounced inspections by Sedgwick County Department of Code Enforcement and Health Department personnel during reasonable daylight business hours to ensure continued compliance with the above requirements.
- N. Signage on Parcel 3 shall be limited to that which is permitted in the "GO" General Office district. Signage on Parcels 1 and 2 shall be that permitted in the "SF-6", Single-family Residential District.
- O. A 300-foot building setback line shall be established along the west property line adjacent to 127<sup>th</sup> Street right-of-way. Access to Parcel 2 shall be revised to provide access to Harry in the event that access to 127<sup>th</sup> Street is eliminated.
- P. Parking shall be calculated at the rate of: 1 space for every three spectator seats; 1 space for every 1000 square feet of arena area; and 1 space for every 250 square feet of office.
- Q. A maximum number of spectators in attendance at any one time shall be 700.

This recommendation is based on the following findings:

- 1. The zoning, uses and character of the neighborhood: Nearby properties are predominately zoned "SF-6", Single-family Residential or SF-20, Single-family Residential. The northeast and southwest corners are zoned "LC", Limited Commercial. Land west of 127<sup>th</sup> Street not zoned "LC" is zoned "SF-6", Single-family Residential. Land east of 127<sup>th</sup> Street not zoned "LC" is zoned "SF-20", Single-family Residential. All surrounding land uses are either residential, agricultural or vacant. The character of the area is one that has had large-lot suburban developments for a long time. The availability of urban services and new developments to the west are now placing growth pressure on this area.
- 2. The suitability of the subject property for the uses to which it has been restricted. The site is zoned "LC", Limited Commercial and "SF-20", Single-family Residential. The site could be developed with large lot residences and retail uses as currently zoned. A property owner could operate a stable and conduct horse

activities for his or her horses without obtaining additional permits. However, to board horses, not owned by the property owner or operate a riding academy, would require a Conditional Use permit. Animal Care, General is not a permitted use in the "SF-20" district, but is permitted with a Conditional Use in the "LC district. The PUD proposal effectively incorporates new development and uses while efficiently using the site's current facilities, and leaves a significant portion of the site as open space.

3. Extent to which removal of the restrictions will detrimentally affect nearby property: If the site is developed with 159 dwelling units, the gross density of the site will be one dwelling unit per acre. If the site is developed at the more intense rate of 206 units, the density is one unit per .78 acre. Thus, overall all intensity of development is compatible with most of the existing residential developments located east and west of the site. The conditions of approval delineate the uses permitted, and only those uses may occur on the site unless additional hearings are held. Building setbacks help reduce potential negative impacts. Existing non-residential uses are set back at least 260 feet from the property line. The barn located closest to the residences to the west is setback some 360 feet.
4. Length of time the property has remained vacant as zoned. The property is developed with horse barns and riding areas. However, the site is unused today and has been unused in recent time.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The "Sedgwick County Development Guide" depicts this site as a "new growth area". "New growth areas" are those primarily undeveloped readily accessible properties that either have urban services or those services can be extended in a cost-effective standpoint.
6. Impact of the proposed development on community facilities: With improvements that will be required at platting time – water, sewer and road guarantees - minimal impact should be noted.

**MILLER** "This request is for 160 acres, currently developed with a stable and barn facilities for horses. It is completely enclosed, as far as I can tell, with wooden fencing and has been used for equine activities in the past. The applicants are seeking this Planned Unit Development to be able to add between 159 and 206 single-family dwelling units. I think you should have had a site plan included in your packets.

They are also seeking to be allowed to continue the equestrian activities that would allow horses to be stabled and for shows and equestrian activities to occur there, including a potential veterinarian clinic. The reason there are two different parcels, as far as the residential use is that these are intended to be single-family homes, but they were calling them patio homes originally, and we didn't have a definition for patio homes. As long as they are single-family homes and the lot size meets the minimum lot standards and all of those things, we don't really care whether they are patio or what type of single-family homes they are.

As you can see from the site plan, they designed it so that there is an ability to be able to ride horses through the subdivision and back to the arena and the pasture areas. There are only two issues that staff and the applicant are working on. One of them has to do with signage. On Page 2, the bottom paragraph of the staff report, they are seeking to have the rights to 'LC' Limited Commercial signage on this parcel here, which would give them approximately 1,440 square feet of potential signage. The height would be between 25 and 35 feet tall, depending on whether they used all of the signage that they are allowed or not. Staff is recommending that 'GO' General Office signage is more appropriate in this location, given the existence of the residences across the street.

The short version of this is that those signs would be 32 feet square, if it is a single tenant. If it is a multi-tenant, they could have up to 96 square feet of signage. The sign could only be 20 feet tall. So we are recommending 'GO' instead of 'LC', so the Commission will need to consider that.

The other issue has to do with preserving, or at least for the short term, trying to preserve what might be a potential corridor for the southeast bypass or an extension of K-96 from Kellogg south. The applicant has provided this little aerial, which will help you get a better look at it. As you can see there, the K-96/Kellogg intersection is approximately a mile north of this location. Ideally, you would come off of that existing interchange, go straight south to some point and then begin to curve southwest and back west to connect back up with K-15 and Interstate 35. But as you can see from this aerial, the existing development pattern that is in the area really limits the choices that we have. You either have the choice of using the corridor that they are showing as future K-96, which would run to the east of this location through this vacant tract of ground here (indicating) and on down south and then turn west somewhere, or you have the option of turning and coming down 127<sup>th</sup> Street and turning, or if you really wanted to mess things up, you come straight through the middle of it.

So, what staff was recommending, because we were advised by the applicant that they intended to start over in this northeast corner (indicating) and begin the development here and the patio home area, which is the northwest corner would be the last area to be developed. We were suggesting that it be moved to the 127<sup>th</sup> Street side. We asked the applicant to include with their application a 300-foot building setback line along the 127<sup>th</sup> Street corridor. It is not in the staff report, but based on discussions we have had with their attorneys this morning, and with county law, it would be our intention that if they are agreeable to providing this 300-foot setback line that that would only exist for a maximum of 3 years. By then, the intention would be that there would be a corridor study completed and we would have a better idea of what is the more appropriate route to take.

If they were to do that, it would impact, as you can see on the site plan, approximately 5 to 6 of the lots in Parcel No. 2. They would not be able to develop those during that period if that 300-foot setback were granted. I guess, then, the bottom line is given the development pattern in that area, we really don't have a lot of options if there is going to be a Southeast Expressway without having to go back and buy developed land at some point in the future. We want you to consider that, and I believe those are the only two issues that staff and the applicant are still debating.

Key points I would just point out to you, we have asked for this property to be platted within 1 year; that parcel Nos. 1 and 2 would be developed in conformance with the development standards of the single-family zoning district, 'SF-6', except that on Parcel 2, they could have a front yard setback of 20 feet, which they need because of the smaller size in order to make that work and that Parcel 3 would have a maximum building area of 100,000 square feet; have 45-foot height, and be restricted to the 'GO' signage and that parking would be as outlined in Item P, and it should be as described below instead of as described above.

What they are proposing in lieu of our 300-foot setback is a 35-foot setback, which is pretty much the standard setback that we get for CUPs and PUDs. I will try to answer any questions."

**MCKAY** "Let's see if I am understanding this right. On the 300-foot setback on 237<sup>th</sup> Street, the only problem that is affected are those four lots that are in Phase II, is that what you are saying?"

**MILLER** "Yeah, in Parcel 2, the way that curves around that 300 foot would get into maybe the first four or five lots."

**MCKAY** "What you are saying, then, is that that would only be for a three year period of time?"

**MILLER** "Yes."

**MCKAY** "And if the study is not done by then, it would be platted the way it is?"

**MILLER** "Yes."

**MCKAY** "Okay, thank you."

**WARREN** "What was the applicant's reaction to that?"

**MILLER** "I have not been able to catch back up with them on the 3-year time limit. When I was talking to him this morning, we didn't have the time limit on it, we were discussing previous lawsuits."

**MCKAY** "The only reason I asked that question was because that is the last thing they are going to develop and they are going to have to be moving like crazy to get that done in three years...that many lots."

**GAROFALO** "Are there any other questions?"

**OSBORNE-HOWES** "Was that for the entire west side or just the upper northwest corner?"

**MILLER** "It would run the whole length."

**GAROFALO** "Are there any other questions of Dale? Okay, thanks, Dale. Was there anyone on the Commission that was contacted on this item? Okay. We will hear from the applicant."

**KENNY HILL** "I am the Civil Engineer with Poe and Associates, representing the applicant. We submitted this plan to the Planning Department in early stages so we could get their recommendations on the entire PUD as submitted. We have incorporated a number of their suggestions into the plan. We limited the number of horses that could be boarded in Parcel 3. We limited the hours of operation for both indoor and outdoor arenas, as far as the lighting. We furnished specifications for the number of parking spaces to be provided. We showed the limits of signage in Parcel No. 3, and we provided a contingent street dedication to extend the street from Parcel 1 to the property to the east. We limited the building height, the building setbacks and floor area in Parcel No. 3. And as they mentioned in the staff comments, we would like the ability to install a neighborhood swimming pool and we will submit a site plan to the Planning staff with that in mind.

Like Dale said, we have requested that Parcel 3 have the City Sign Code for 'LC' zoning. The Planning staff wants to downsize that to 'GO' zoning. The difference is mainly in size of the signs allowed in those two conditions. The developer wants to have the ability, at the entrance into this area of putting a larger sign so that he can list upcoming events having to do with the horses.

Most of our discussions with the Planning Department were about future extension of the highway. You do have little aerial photograph that shows what could happen in that area. It is our understanding that neither the City or County has any kind study in place at this time as far as the location of that highway, nor do they have any funding available for either the study or the purchase of right-of-way. During our discussions with the Planning staff, they asked if we could modify our plan, as Dale had said. We talked about a number of different provisions. First, I think we talked about what could be done on the east side. I think it was suggested that we might put a 300-foot reserve on the east of this property. We weren't very receptive to that because it would scrap our plan pretty much, the way we have it. So we talked about a 150-

foot that would split the east property line and we didn't feel that that was much better than the other plan. They suggested that we plat deeper lots where the highway would just take the backside of the lots. And then we discussed the west side, the 300-foot setback, or building setback.

Of course, all of these are made to provide for a future highway that may or may not even go through this property because there has been no study completed. It is not uncommon to take 10 or 20 years from the time the study is completed to when the highway actually goes in. It is our contention that without a study, nobody really knows where this highway should be located, and it makes it pretty much impossible for us to provide for its location at this time. Secondly, that the highway could be located on the adjacent property to the east as we have shown on the aerial photograph. I might point out that this photograph is a current photograph. Our company, Poe and Associates had that flown in conjunction with the study that we are doing for the relocation of 54 Highway through Andover and in Butler County to Augusta.

One of the concerns of the Planning staff's traffic engineer was the design speed of the curves necessary to transition from the existing location to the half-mile line. Those curves are 70 to 75 miles per hour design speed, as shown on that aerial. So we don't see that as a problem. We can't see any reason why that couldn't be relocated on the undeveloped property, which is now vacant on the east side of this property.

Another point is that we estimate that it will take at least a year, by the time we go through the platting and the street and utility design and the construction of the streets before we make any improvements to this property. Our contention is that within one year they should be able to complete this study and come up with the funding necessary to purchase right-of-way if they so choose. So, I guess, in conclusion, we don't see any reason why this project should be held up for that study.

In summary, we are in agreement with all of the staff suggestions except for two. One is the signage. What we would suggest is if this is approved with the 'GO' zoning, or that signage allowed in the 'GO' zoning, that one sign, up to 400 foot in size could be put on 127<sup>th</sup> Street.

Second, the most important thing to this project is that there is no restriction for the future extension of K-96. For one thing, we think it would be detrimental to the sale of lots if you point out that the highway could come through that area. So we feel that this is kind of a unique development which will be an asset to the community and we ask for your support of the plan. The developer is also here, and we will be glad to answer any questions."

**MCKAY** "Kenny, are you saying that you will agree to one 400 square foot sign?"

**HILL** "Yes, to the 'GO' zoning for signage, with the provision that we get one 400 square foot sign."

**MCKAY** "According to staff, you are able to have 1440 square feet."

**HILL** "We didn't really want that, we didn't need that much anyway."

**MCKAY** "So that would be deleted from there and say maximum of one 400 square foot sign?"

**HILL** "Yes, and the requirements in 'GO' zoning."

**LOPEZ** "Did you say this aerial is the current one?"

**HILL** "Yes, it was flown in January."

**LOPEZ** "The proposed K-96 for the future to the east of the applicant's property and that 40 acres, is that currently owned by the applicant?"

**HILL** "No."

**LOPEZ** "So the applicant, so it doesn't affect his development, is imposing on another property owner?"

**HILL** "What we are saying is that he has a plan in place that he wants to do now and the other property is vacant?"

**LOPEZ** "Does the other property owner know about this imposition?"

**HILL** "I don't know. We haven't contacted them."

**KROUT** "I just want to point out to the Commission and maybe you want to respond to it, that the 'LC' standard allows the maximum sign of 300 square feet. I can't recall that we have ever had a variance request even by theaters who have lots of advertising needs, to go over 300 square feet."

**HILL** "Okay, then maybe I misread that. I thought we were asking for the same. I think 300 square feet would be sufficient."

**LOPEZ** "The staff recommendation to provide 300 foot of easement on 127<sup>th</sup> Street is not acceptable for a three year time frame?"

**HILL** "No, it was not."

**KROUT** "That is not an easement, just to clarify for the record, it is a building setback."

**HILL** "Yeah, that would eliminate 6 or 7 lots, maybe, and like I said, would point out the fact that there could be a highway coming through that. What we are saying is that we would rather not put anything on the plat and just hope that they would get that study in place before we got over there. It is the developer's plan to start in the northeast corner, so I doubt very much that he is going to have anything over there within a couple of years. If they would start now, they should have time to get this study in place and be able to purchase any right-of-way before he has time to develop it without imposing other restrictions on the property."

**MCKAY** "Where are we on that study?"

**KROUT** "I think it is not funded. There is a recommendation to fund a corridor study like the Northwest study in the Comprehensive Plan and maybe if this zoning case goes forward it will kind of force the issue in terms of getting the funding. We did apply to the Federal Government, the U.S. Department of Transportation, and we were hoping that we could ride the coattails of another bill and get some money to do this study, but it didn't make it in the House bill, so there is still a slim possibility that we might get that funding in the fall. But if not, I think the County would have to decide if this was important enough to come up with the money and come up with it soon."

**PLATT** "Will Poe and Associates be eligible to do the study?"

**KROUT** "That is for the County Engineer to decide, I guess."

**GAROFALO** "Are there any other questions?"

**LOPEZ** "I have a question for Marvin. The option is moving it over to the left side and coming down 127<sup>th</sup>. Is it a reality that when they build a freeway they would actually go down an arterial?"

**KROUT** "Yes. In fact, we had a discussion with the City Engineer and the City Public Works Director and they came to the conclusion that that would be preferable. One of the reasons is that 127<sup>th</sup> Street is not going to connect with Kellogg. In fact it doesn't connect with Kellogg on the north side, and when Kellogg is improved in the future, it won't connect on the south side either. Getting it closer to the development area and towards Derby rather than farther away makes sense and also, in terms of this development has the least impact on their development. It is an area that they had planned for a pasture and riding area, with the exception of those several lots in the corner and it sounded as though they weren't going to be doing that development for a number of years, so we are just asking for that building setback to be established on a temporary basis, not even platted, but just as a note on the CUP so it wouldn't have to be vacated at a later date, just in order to give us enough time, and one year is probably not enough time to find funding and complete a study. If you remember, that Northwest Corridor study took quite a while."

**GAROFALO** "Is there anyone else to speak in favor of this application? Okay, John, you have 3 minutes and 23 seconds."

**JOHN GREENSTREET** "I am the developer of the property. One of the things that we are vehemently against is having any kind of a reserve, an easement or whatever you want to call it, on the property. My investors in the property have said that if that is the case, if we are going to be held hostage to that, they will not do the development. Period. They have gotten kind of beat up on some other things and have now said that they are not going to put our millions of dollars of investment into a deal and then have it ruined by a highway coming through. If the County and the City are in a position to up and buy it, let's move forward. If they are not, let's get our development moving forward."

I think when I first talked to Marvin before we did much of anything else, Gary Wiley and I went down there and I asked him if he would hold us hostage to do this. He looked at it and said well, they would like to do something, but they didn't think they would hold us hostage. Now I find that we are being held hostage to it. Even if you came down the west side of the property on 127<sup>th</sup> Street, yes, we would only lose 6 or 7 lots at the northwest corner of the property, but we would also lose a gross of about 18.88 acres of pasture for the horses. That is one of our key features. I don't think we are interested in going to the general public and say 'here is a development, but you are going to maybe have a highway go through it, we don't know'. If we are forced to do that, then I think we will retract and go on down the road and do something different.

At this point in time, there is no study, there is no funding for a study, there is no way to determine where it is going to be. I think, in all fairness to us, unless there is something going to happen in the immediate future, then you should allow us to go forward and do the development."

**KROUT** "John, not intending to negotiate about that land, but if the County came to you and gave you what you thought was a fair value for that property and then they said 'and we will lease it back to you for \$1 a year until we are ready to build a highway, but we really need to hold on to this because there may need to be a highway here', are you saying that

your development plans would be scrapped because the highway, reserving the land or not, but a highway in that location conflicts with the plans for your property and would hurt the development?"

**GREENSTREET** "It conflicts with the investment dollars of the investors who are willing to put up their money to do the deal. They just said if the highway is there, we're not. Period. No offense, but if there was a study, if there was something that we could definitely know, it would be one thing, but we looking at 15 to 20, maybe 30 years out. Unfortunately, I don't want to be telling a consumer that he is buying a house in a subdivision that is built around an equestrian-type of scenario that potentially might be a highway coming through either part or the center or some portion of it that we have no control over when that may happen. I think the investors are just saying that if that is the case they are not interested."

**MCKAY** "Marvin, in looking at this aerial photograph; let's say for example, that they did do the study and said 'all right, let's go down 127<sup>th</sup> Street'. Where would that subdivision to the west get access to it?"

**KROUT** "I think you would leave 127<sup>th</sup> Street like a frontage road, a two-way frontage road. That is the way it would act."

**MCKAY** "So all of that would come off of this piece of ground?"

**KROUT** "Right. That is why we are saying 300 feet. That is the standard width."

**WARREN** "I am very much surprised, I guess, that John Greenstreet and company aren't represented better here by counsel."

**GREENSTREET** "I have my counsel here, as well."

**WARREN** "We, in this group, don't seem to like to deal in the reality of what we can do and can't do, quite often. It would kind of like the Police Department today maybe wanting to thumb their nose at Miranda. The courts have spoken pretty loud on that and it wouldn't be a wise thing for them to do. We have a case called Dolan that has a test of rough proportionality. This thing that they are asking for wouldn't meet the Dolan test of rough proportionality in 2%. Why that isn't being brought here, and what we are asking for is something we have no right to ask for by a very clear, a well defined, a very understandable Supreme Court doctrine that came down."

**KROUT** "I guess I would just say briefly that we always enjoy it when Commissioner Warren practices law."

(Laughter here)

**WARREN** "I am asking somebody to practice law, I'm not practicing it."

**KROUT** "I think that City and County Law are aware of this situation. There is also a local case called the Ventures case that was where something that had some similarities was held against local government, but there are differences between those two cases in a number of regards and we would have continuing discussions with the County Law office between now and when this goes to the County Commission about what can and cannot be done legally and probably with your counsel, too."

The main thing that we felt we needed to do here was to raise this issue with you, that planning is about trying to keep options open. We know that as George Ablah, in the northeast area got zoning to approve all of that Comatara area, that he voluntarily reserved 300-foot strips throughout all of this development. If it weren't for that, we probably wouldn't have a Northeast Expressway today. So this is just something that you have to think about as planners."

**WARREN** "That was admirable of George to do and he wanted that real bad. I can see if a guy came forward and did that, it would be great, but for us to demand that is something quite different."

**MILLER** "You have to remember that this is not a request for a dedication. This is simply a request for a building setback line. There is a big difference in asking for a donation as in Dolan for a bike path, for the land to just be given outright, as opposed to asking for a building setback line."

**WARREN** "I think John's counsel would probably tell you that that is temporary condemnation, too."

**MICHAELIS** "I just have a couple of comments. I think this is a great idea. I think it is probably something that would appeal to a lot of people. It would be interesting to see what our feelings would be if the housing was already there and somebody came in and said they wanted to put a horse barn next to it. But regardless of that, if the highway is on the east side, is that going to effect your views as much as on the west side?"

**GREENSTREET** "As long as it is not on our property to where we have to deal with it and say it is going to be going through part and parcel of our piece, then I don't think it impacts us one iota."

**MICHAELIS** "So you think there is enough buffer there?"



**GREENSTREET** "There is plenty of buffer. There is probably over 1,000 feet or 800 feet or so to the east of us where that highway could go and follow the east line all the way south and I think the aerial photo that we have provided depicts that quite well."

**GAROFALO** "Are there any other questions of the applicant? Thank you, John. Is there anyone else who wishes to speak in favor of this besides the applicant? Is there anyone to speak in opposition? Seeing none, we will bring it back to the Commission."

**OSBORNE-HOWES** "Can I ask a quick question? Are we okay on the signage then?"

**GAROFALO** "I think so."

**KROUT** "If you are asking staff, I think 300 square feet is excessive for a sign, but I think it is certainly better than just following the 'LC' standards and giving them more than one sign that is 300 square feet."

**GAROFALO** "The applicant was agreeable to the 300, I believe."

**MICHAELIS** "I am going to make a motion to approve this. Personally, I think a lot of the things that we were talking about are out of our jurisdiction as far as the time frame and the study and all of that kind of stuff. I don't know that we are empowered to do that. I would leave that up to the governing body."

**MOTION:** Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: Nearby properties are predominately zoned "SF-6", Single-family Residential or SF-20, Single-family Residential. The northeast and southwest corners are zoned "LC", Limited Commercial. Land west of 127<sup>th</sup> Street not zoned "LC" is zoned "SF-6", Single-family Residential. Land east of 127<sup>th</sup> Street not zoned "LC" is zoned "SF-20", Single-family Residential. All surrounding land uses are either residential, agricultural or vacant. The character of the area is one that has had large-lot suburban developments for a long time. The availability of urban services and new developments to the west are now placing growth pressure on this area. The suitability of the subject property for the uses to which it has been restricted. The site is zoned "LC", Limited Commercial and "SF-20", Single-family Residential. The site could be developed with large lot residences and retail uses as currently zoned. A property owner could operate a stable and conduct horse activities for his or her horses without obtaining additional permits. However, to board horses, not owned by the property owner or operate a riding academy, would require a Conditional Use permit. Animal Care, General is not a permitted use in the "SF-20" district, but is permitted with a Conditional Use in the "LC" district. The PUD proposal effectively incorporates new development and uses while efficiently using the site's current facilities, and leaves a significant portion of the site as open space. Extent to which removal of the restrictions will detrimentally affect nearby property: If the site is developed with 159 dwelling units, the gross density of the site will be one dwelling unit per acre. If the site is developed at the more intense rate of 206 units, the density is one unit per .78 acre. Thus, overall all intensity of development is compatible with most of the existing residential developments located east and west of the site. The conditions of approval delineate the uses permitted, and only those uses may occur on the site unless additional hearings are held. Building setbacks help reduce potential negative impacts. Existing non-residential uses are set back at least 260 feet from the property line. The barn located closest to the residences to the west is setback some 360 feet. Length of time the property has remained vacant as zoned. The property is developed with horse barns and riding areas. However, the site is unused today and has been unused in recent time. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The "Sedgwick County Development Guide" depicts this site as a "new growth area". "New growth areas" are those primarily undeveloped readily accessible properties that either have urban services or those services can be extended in a cost-effective standpoint. Impact of the proposed development on community facilities: With improvements that will be required at platting time – water, sewer and road guarantees - minimal impact should be noted.) I move that we recommend to the governing body that the request be approved, subject to the following:

1. The development of this property shall proceed in accordance with the development plan as recommended for approval by the Planning Commission and approved by the appropriate governing body, and any substantial deviation of the plan, as determined by the Zoning Administrator and the Director of Planning, shall constitute a violation of the building permit authorizing construction of the proposed development.

2. Any substantial deviations in the development plan shall be submitted to the Planning Commission and Governing Body for their consideration and denial or approval.
3. The transfer of title of all or any portion of the land included within the PUD does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land and be binding upon the present owners, their successors and assigns, unless amended.
4. All property included within this PUD shall be platted within one year after approval of this PUD by the Governing Body, or the case shall be considered denied and closed. The resolution or ordinance shall not be published until the plat has been recorded with the Register of Deeds.
5. Prior to publishing the ordinance or resolution establishing the PUD, the applicant shall record a document with the Register of Deeds indicating that this tract includes special conditions for the development of this property.
6. When necessary, the applicant shall submit revised copies of the PUD to the Metropolitan Area Planning Department within 30 days after approval of this request by the Governing Body, or the request shall be considered denied and closed.
7. All development on Parcels 1 and 2 shall be developed in conformance with the development standards contained in the "SF-6" Single-family Residential district, except that the front yard setback in Parcel No 2 shall be 20 feet. Development on Parcel 3 shall conform to the following development standards: 35-foot setbacks, maximum building area of 100,000 square feet; maximum building height of 45 feet; signage as permitted in the "GO" district; and parking as described above.
8. Animal wastes from areas where the animals shall be gathered as needed and as weather permits to prevent flies and odor. The gathered wastes shall be stored and disposed of consistent with County Health Department recommended best management practices.
9. The horse stable facility shall be maintained free of rodent harborage, including but not limited to improperly stored materials, enclosed partition walls and wooden floors closer than 12 inches of the ground. Grain or protein feed shall be stored in tightly covered rodent-proof bins. Use shall be made of rodenticide and insecticides for control of rodents and flies. The horse stable facility shall be cleaned at least once a week, or more often if necessary, to prevent or control odors, fly breeding and rodent infestation.
10. Use shall be made of Health Department approved soil sterilants and herbicides or other effective means for the control of weeds and grass around the horse stable and associated corral areas.
11. The horse stable and any associated board fences or wooden horse shelters shall be protected from deterioration by painting. Painting is not required for redwood, cedar or chemically and pressured treated lumber. The stable building, fences and shelters shall be constructed of dimensioned building materials.
12. The maximum number of horses to be stabled on the property shall be 100, plus any foals born to stabled mares. After one year from the date of foaling, yearlings will count towards the maximum number of horses permitted on the site. Up to 150 additional horses may be stabled overnight in connection with riding events.
13. The buildings and structures associated with the horse facility shall be open to unannounced inspections by Sedgwick County Department of Code Enforcement and Health Department personnel during reasonable daylight business hours to ensure continued compliance with the above requirements.
14. Signage on Parcel 3 shall be limited to 300 square feet in area and developed to "GO" General Office district standards. Signage on Parcels 1 and 2 shall be that permitted in the "SF-6", Single-family Residential District.
15. Parking shall be calculated at the rate of: 1 space for every three spectator seats; 1 space for every 1000 square feet of arena area; and 1 space for every 250 square feet of office.

A maximum number of spectators in attendance at any one time shall be 700.

**MICHAELIS** moved, **WARREN** seconded the motion.

**GAROFALO** "Is there any discussion?"

**OSBORNE-HOWES** "Marvin, are we empowered to do this?"

**KROUT** "To establish a temporary setback line?"

**OSBORNE-HOWES** "Uh huh. That was part of the comment that we are really not empowered to do that. Are we?"

**KROUT** "I would tell you, at this time I believe that it is within your authority and the County Commission's authority to do this. We will have further discussions as it goes forward, but I think that you have the authority to do it."

**MILLER** "I just have a clarification. On the signage, are we talking about one sign 300 square feet built to 'GO' standards, and that is it, or is it one 300 foot sign, plus other signage as permitted in the 'GO' district so that they could have more signs?"

**WARREN** "What does the applicant say?"

**GREENSTREET** "The 'GO' signage requirements plus an additional 300-foot sign."

**MCKAY** "That isn't what we talked about."

**GAROFALO** "So are we talking about one sign or more than one sign?"

**MILLER** "One sign is what they are saying now."

**MCKAY** "That is what I understood. I was wondering."

**GAROFALO** "Is there any other discussion?"

**VOTE ON THE MOTION:** The motion carried with 10 votes in favor (Michaelis, Hentzen, McKay, Warner, Lopez, Barfield, Garofalo, Johnson, and Marnell. There were 2 votes in opposition (Platt and Osborne-Howes).

**PLATT** "I just want to explain my vote. I think it is a good development and I think the building setback is reasonable, something that we should be doing. If we don't do this sort of thing, then we will need to do things a little bit later, and then the public criticizes us and says 'why didn't the planners anticipate this problem?' In the hearings for the Comprehensive Plan, we talked this and you said we were going to move ahead and try to get the planning done so that we would not be taking from the policy, which is what we ought to be doing here."

If anybody is being held hostage, it seems to me that we are. I certainly do not go for it under these circumstances."

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8. **Case No. CON2000-00020** - Marvin R. & Alma J. Kling (Applicants) request a Conditional Use permit for outdoor vehicle and equipment sales on property described as:

The North 200 feet of that part of the Northwest Quarter of Section 21, Township 29 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, described as follows: Beginning at the Northwest corner of said Northwest Quarter; thence Easterly, on the North line of said Northwest Quarter, on an assumed bearing of south 89 degrees 56'34", a distance of 273.00 feet; thence South 8 degrees 33'56" E, a distance of 424.78 feet; thence North 89 degrees 56'34" W, a distance of 333.00 feet to a point on the West line of said Northwest Quarter; thence Northerly on said West line, North 9 degrees 26'44" W, a distance of 420.00 feet to the point of beginning, subject to rights-of-way on the North and West; according to the last deeds filed of record in the Office of Register of Deeds, Sedgwick County Kansas, as of April 17, 2000 at 7:00 a.m. Generally located at Broadway & 95<sup>th</sup> Street South (9606 South Broadway).

**BARRY CARROLL**, Planning staff, Senior Planner, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

**BACKGROUND:** The applicants are requesting a Conditional Use to allow outdoor vehicle and equipment sales on a 1.68 acre unplatted tract generally located at the southeast corner of South Broadway and 95<sup>th</sup> Street South (9606 South Broadway). The subject property is zoned "LC" Limited Commercial and outdoor vehicle and equipment sales is permitted with a Conditional Use in the "LC" zoning district. There is access to the site from both South Broadway and 95th Street South.

There is one building currently on the property and in need of major renovation. There is a graveled area in front of the buildings. The property served as a service station for 50 years; the station is no longer in operation (the fuel tanks have been removed). There was a feed store and restaurant next to the service station as well. Neither business is currently operational. There was also slaughterhouse operation located on the southeast portion of the property that is now defunct. The applicant plans to demolish the small building within one year.

The character of the neighborhood is that of mixed-uses consisting of single-family and commercial uses. The zoning of adjacent properties to north and west is "LC." The zoning of the properties to the east and south are zoned "RR." Property north of the site is a wooden area and is undeveloped (with an abandoned building). South of the site is a single-family residence; there is a plumbing/pest control business (Able Carter Exterminator) and used car and body shop business (Waco Auto Sales) to the southeast. East of the site is a single-family residence (and a former welding shop). West of the site is a small commercial building that is currently vacant.

The applicant has submitted a site plan showing the proposed use of the subject property. The site plan shows a sales/office building, a display area, and a storm shelter, employee/customer parking spaces and a driveway along the west property line.

**CASE HISTORY:** The subject property is currently unplatted.

**ADJACENT ZONING AND LAND USE:**

|        |      |   |
|--------|------|---|
| NORTH: | "LC" | Vacant lot                                    |
| SOUTH: | "RR" | Single-Family Residence                       |
| EAST:  | "RR" | Single-Family Residence (former welding shop) |
| WEST:  | "LC" | Sheet Metal Building                          |

**PUBLIC SERVICES:** This site has access to South Broadway, a two-lane arterial with 1999 traffic volumes of approximately 4,170 (ADDT) vehicles per day. The 2030 Transportation Plan estimates the volumes on South Broadway to increase to approximately 5,600 (ADDT) vehicles per day. There is no sewer or water provided to this site. On-site services (well water and sewer) will need to be approved by appropriate health departments.

**CONFORMANCE TO PLANS/POLICIES:** The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for "Commercial" development. The Plan recommend that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The Commercial Locational Guidelines also recommend that auto-related commercial uses should be guided to cluster in areas such as CBD fringe, segments of Kellogg, and other appropriate areas and streets where these uses may already exist or to locations where traffic patterns, surrounding land uses, and utilities can support these activities.

**RECOMMENDATION:** Based upon information available prior to the public hearing, planning staff recommends that the request be APPROVED, subject to platting within one year and the following conditions:

1. No outside storage of salvaged vehicles or parts shall be permitted.
2. All parking, storage, and display areas shall be paved with concrete, asphalt, or asphaltic concrete. Parking barriers shall be installed along all perimeter boundaries adjacent to streets, except at driveway entrances or where fences are erected, to ensure that parked vehicles do not encroach onto public right-of-way.
3. The vehicle sales lot shall not be conducted in conjunction with any use not directly related to such a business. Any automotive service or repair work conducted on the site shall be entirely within a building. No body or fender work shall be permitted.
4. No temporary display signs are permitted, including the use of commercial flags, banners, portable signs, pennants, streamers, pinwheels, string lights, search lights, bunting and balloons, except that fixed banners, affixed to light poles and not exceeding 50 square feet of material per light pole, will be permitted. However, in addition to the above, affixed banners or special promotional items shall be limited to twelve (12) events per year not to exceed ninety (90) days per year for all events.
5. Outdoor speakers and sound amplification systems shall not be permitted.
6. There shall be no elevated platforms for the display of vehicles.
7. The lighting standards of Section IV-B.4 of the Unified Zoning Code shall be complied with. No string-type lighting shall be permitted.
8. The applicant shall erect a screening wall or fencing (constructed of standard building materials) along the eastern and southern property lines that are adjacent to residential zoning.
9. At the time of platting, access control may be limited to one point along South Broadway and one along 95<sup>th</sup> Street South.
10. The site shall be developed in general conformance with the approved site plan. All improvements shall be completed and permits obtained before the facility becomes operational.
11. Any violation of the conditions of approval shall declare the Conditional Use null and void.

The staff's recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood:** The character of the neighborhood is that of mixed-use development consisting of single-family and various commercial uses. The zoning of adjacent properties to north and west is "LC" Limited Commercial. The zoning of adjacent properties to the east and south is "RR" Rural Residential. Property north of the site is undeveloped. Property south of the site is a single-family

residence. Property east is a single-family residence (and former welding shop). Property west of the site is developed as a commercial sheet metal business.

2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned "LC" Limited Commercial. The property is developed with a vacant feed store and is apparently suitable for commercial uses to which it has been restricted.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Detrimental affects should be minimized by the recommend conditions of approval, which would limit signage, lighting, noise, and display area practices.
4. Conformance of the requested change to adopted or recognized Plans/Policies: The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for "Commercial" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. This site is located along Broadway, and the recommended conditions of approval have provisions, which limit noise, lighting, and other adverse impacts. The Commercial Locational Guidelines also recommend that auto-related commercial uses should be guided to cluster in areas such as CBD fringe, segments of Kellogg, and other appropriate areas and streets where these uses may already exist or to locations where traffic patterns, surrounding land uses, and utilities can support these activities. This site is located along Broadway in an area where auto-related commercial uses already exist.
5. Impact of the proposed development on community facilities: The use of this property should have limited impact on community facilities.

**CARROLL** "This area has been used as a service station for the past 50 years, and has an assorted number of uses, a feed store, slaughter house in the back, and an auction barn. The house to the northwest is being remodeled. There is a vacant commercial building to the west, and a residence to the southwest. There are two businesses to the south, an extermination business and a car lot. The applicant, Mr. Kling, is here to answer any questions you might have. Staff is recommending approval.

I might also add that this case went before the Haysville Planning Commission on June 22 and they voted 7-0 to recommend approval."

**GAROFALO** "Are there any questions of Barry?"

**HENTZEN** "Barry, is this the corner that used to be called Waco Wego?"

**CARROLL** "Yes."

**JOHNSON** "It still is, Bud."

**HENTZEN** "Okay. So that is the corner."

**GAROFALO** "Are there any other questions? Okay. Is the applicant here?"

**CARROLL** "Yes, he is."

**MARVIN KLING** "I bought this property about eight years ago and had the gas tanks removed, which were leaking. We had the Health Department in there and they claimed that there was contamination. I didn't want to fix up the buildings, but they were going to come in and tear them down and remove the contamination. They said it might be 5 years because I am on a low priority list. The location is not near a residence or anything and the water wells all around there are okay, so I just thought I would fix the buildings all up and put in a business, a car lot there until they decided what they were going to do.

I had nothing to do with the previous auction business. I just leased it to people and it did cause a lot of problems around there. I tried to get the man off of there and he claimed it was zoned for that. It has been zoned for Light Commercial, but I didn't have anything to do with the auction."

**GAROFALO** "Sir, did you give your address? I don't believe you did."

**KLING** "Where I live? I live at 1253 North Hydraulic in Sumner County. Right across the Sumner County line, south about 5 miles."

**GAROFALO** "Are there any other questions of the applicant?"

**HENTZEN** "Have you read the recommendations by the staff and do you agree with them? Are there any you don't agree with?"

**KLING** "Yes, on the fencing. I think because it is on the south side of the property between Mark Worth and me that there is a hedgerow there. I didn't get to talk to him, and the Haysville Planning Commission didn't think we would need to put a fence. Maxy lives on the east side of the property and he said he didn't care what kind of fence was put up, and it didn't need to have no fence put up. He is building a 30 x 40 building right next to my property line and his, so it will block off any view from his house of my property."

**HENTZEN** "Apparently you are addressing Item No. 8 where they recommended fencing?"

**KLING** "Yes."

**HENTZEN** "Okay. You don't think you should have to do that?"

**KLING** "It doesn't really matter to me, but I don't see any need for it, other than for security. If I had to put up a fence, I would rather put up a chain-link fence. I think it had to be a masonry or a board fence. I would rather put up a chain-link fence."

**HENTZEN** "Okay."

**BARFIELD** "The business to the north of you, what kind of business is that?"

**KLING** "There are no buildings to the north of me."

**BARFIELD** "You made mention of the fact, when we were talking about the screening, you said you had conversation with the gentleman, the property owner next you."

**KLING** "That is Maxy, to the east."

**BARFIELD** "Is that commercial property or residential?"

**KLING** "He did have a welding business there. The property across the road, I think built sheet metal parts for Cessna."

**BARFIELD** "What about the property that adjoins your property?"

**KLING** "To the south?"

**CARROLL** "To the north is vacant and to the south there is a residence."

**BARFIELD** "Okay. Now, which one were you talking about when you said that you had not had any conversation with them?"

**KLING** "That is the one to the south with a hedgerow. There is a hedgerow of trees and shrubs."

**BARFIELD** "And that is between your property and his property?"

**KLING** "Yes, sir."

**KROUT** "Commissioners I will just explain that the Commission doesn't have the authority to waive screening requirements from the Zoning Code as part of a Conditional Use. On the south side of the property, if the landscaping is sufficient or can be bolstered, then there is a provision where administratively we can waive the screening in lieu of the landscaping, but to waive it on the east side, it would probably take the Board of Zoning Appeals action. So it is really not part of the jurisdiction of this body right now."

**GAROFALO** "Okay. Are there any other questions of the applicant? Okay, thank you, sir. Is there anyone else here to speak in favor of this application? Is there anyone to speak in opposition? No one to speak in opposition? Okay, I will take it back to the Commission."

**LOPEZ** "Marvin, on recommendation No. 10, 'the site shall be developed in general conformance with the approved site plan'. (Indicating) Is this the approved site plan?"

**KROUT** "I guess I need to start looking at site plans."

**GAROFALO** "I don't understand it at all."

**LOPEZ** "Well, we wanted a professional site plan from the last applicant."

**KROUT** "Can I suggest that you make this subject to a revised site plan that has been approved by the Planning Department?"

**LOPEZ** "I'm sitting here and I don't see ingress or egress; there is no parking lot or parking slots. Did you say to make the motion...."

**KROUT** "Subject to a revised site plan."

**MARNELL** "I would like to see something either done professionally or I would like to see something stamped by the City Engineer or the Traffic Engineer saying that this is approved."

**LOPEZ** "I agree with you."

**MICHAELIS** "Can't the Traffic Engineer do that? You are saying he reviews these and approves them, right?"

**KROUT** "Well, we should be sending all of the site plans to either the County Engineer or the City Engineer. I am not sure when we got this.

I agree that this is not an adequate setback, but I think that we can probably take care of this administratively if you give us that instruction. I don't think it is quite as sensitive as that 50-foot lot on Broadway."

**MOTION:** Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The character of the neighborhood is that of mixed-use development consisting of single-family and various commercial uses. The zoning of adjacent properties to north and west is "LC" Limited Commercial. The zoning of adjacent properties to the east and south is "RR" Rural Residential. Property north of the site is undeveloped. Property south of the site is a single-family residence. Property east is a single-family residence (and former welding shop). Property west of the site is developed as a commercial sheet metal business. The suitability of the subject property for the uses to which it has been restricted: The property is zoned "LC" Limited Commercial. The property is developed with a vacant feed store and is apparently suitable for commercial uses to which it has been restricted. Extent to which removal of the restrictions will detrimentally affect nearby property: Detrimental affects should be minimized by the recommend conditions of approval, which would limit signage, lighting, noise, and display area practices. Conformance of the requested change to adopted or recognized Plans/Policies: The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for "Commercial" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. This site is located along Broadway, and the recommended conditions of approval have provisions, which limit noise, lighting, and other adverse impacts. The Commercial Locational Guidelines also recommend that auto-related commercial uses should be guided to cluster in areas such as CBD fringe, segments of Kellogg, and other appropriate areas and streets where these uses may already exist or to locations where traffic patterns, surrounding land uses, and utilities can support these activities. This site is located along Broadway in an area where auto-related commercial uses already exist. Impact of the proposed development on community facilities: The use of this property should have limited impact on community facilities.) I move that we recommend to the governing body that the request be approved, subject to the following:

1. No outside storage of salvaged vehicles or parts shall be permitted.
2. All parking, storage, and display areas shall be paved with concrete, asphalt, or asphaltic concrete. Parking barriers shall be installed along all perimeter boundaries adjacent to streets, except at driveway entrances or where fences are erected, to ensure that parked vehicles do not encroach onto public right-of-way.
3. The vehicle sales lot shall not be conducted in conjunction with any use not directly related to such a business. Any automotive service or repair work conducted on the site shall be entirely within a building. No body or fender work shall be permitted.
4. No temporary display signs are permitted, including the use of commercial flags, banners, portable signs, pennants, streamers, pinwheels, string lights, search lights, bunting and balloons, except that fixed banners, affixed to light poles and not exceeding 50 square feet of material per light pole, will be permitted.
5. Outdoor speakers and sound amplification systems shall not be permitted.
6. There shall be no elevated platforms for the display of vehicles.

7. The lighting standards of Section IV-B.4 of the Unified Zoning Code shall be complied with. No string-type lighting shall be permitted.
8. The applicant shall erect a screening wall or fencing (constructed of standard building materials) along the eastern and southern property lines that are adjacent to residential zoning.
9. At the time of platting, access control may be limited to one point along South Broadway and one along 95<sup>th</sup> Street South.
10. The site shall be developed in general conformance with the approved site plan. All improvements shall be completed and permits obtained before the facility becomes operational.
11. Any violation of the conditions of approval shall declare the Conditional Use null and void.
12. The applicant will submit a revised site plan, subject to the approval of MAPD staff.

**MCKAY** moved, **WARNER** seconded the motion.

**LOPEZ** "Can I get clarification from the maker of the motion? Are you saying to revise this current format or revised so that it is acceptable to staff?"

**MCKAY** "I think acceptable to the staff whether a pro does it, or you do it, or I do it, or he does it? We had one done by the City Engineer a while ago, and the Traffic Engineer did one we didn't think was worth a darn. So, I don't know, who do we trust? What do we do?"

**OSBORNE-HOWES** "I have a quick question. First of all, thanks for No. 5, I really appreciate that, I would like to keep it in the family. I do have a question on No. 4 though. You are allowing some fixed banners on line poles, and some special promotional signage, and I know on some you do and some you don't, and I just wondered why on this one?"

**CARROLL** "I might add that this is one that we are doing pretty standard on these Conditional Use requests for car lots."

**OSBORNE-HOWES** "It wasn't on the last one."

**KROUT** "I am not sure if they had been on some past Conditional Use that you reviewed, but I don't think it has been one that we have been recommending usually on these."

**CARROLL** "Okay."

**OSBORNE-HOWES** "As a matter of fact, I would like to see that out of there."

**CARROLL** "The last part, or the whole No. 4?"

**OSBORNE-HOWES** "The last part. I guess I am even wondering about fixed banners."

**KROUT** "That has been standard."

**OSBORNE-HOWES** "Okay, then the last sentence. So, what about...don't we have a motion?"

**GAROFALO** "Commissioner McKay?"

**MCKAY** "I guess I heard the discussion, but I don't know what she said. Are you talking about the banner in there?"

**OSBORNE-HOWES** "The fixed banners and special promotional items."

**MCKAY** "Leave it at staff comments."

**MICHAELIS** "I would just like to make a comment. I am sorry that we are taking this site plan thing with a sense of humor, because I certainly don't see it that way. I feel that it is our job to make sure that we are not infringing on anything or there isn't something there that is infringing on this person. If there is a gas line going through there, maybe right under the building, it maybe something that we don't want. I hate to see this turned into a laughing matter, but if we are going to approve uses on a site, then we should have an acceptable site plan."

**MARNELL** "I would like to make a comment in that area, too. I don't think, in terms of the site plan, that whether it is produced by professional engineers or by the applicants themselves is the issue here. It is whether staff has reviewed them properly and that they are, in fact, adequate for us to act on, and I think that is where both of the ones we have seen today maybe will come up short."



What I hate to see is bodies like this sitting around saying 'let's put another level, and let's put another requirement on businesses'. There is enough out there now. Certainly staff has professional capabilities of reviewing these things. It shouldn't have come to us in the form that it is, and I agree with that part."

**MICHAELIS** "I fully agree with that, and I am not saying that I want to require anybody to go and have it professionally done. If it is acceptable to the staff and they have reviewed it and they are comfortable with it, I am comfortable with it."

**LOPEZ** "Well, in this particular case, the motion is to approve with an acceptable site plan. Now, from the standpoint of staff, for my clarification, what is an acceptable site plan? To me, this one is not acceptable, as a Commissioner, based on the prior car lot requests. So I am asking you, as staff to clarify what is going to be an acceptable site plan in this particular case?"

**KROUT** "We have standards. I don't know if we have handed them out, but we developed administrative standards for what site plans should contain. They should be done to a scale and that they should show drive-ways, they should show dimension parking spaces and then the proper locations and buildings and they are reviewed by us and by the Traffic Engineer to make sure that they work. So I think we have proper standards to handle this. We just didn't apply them in this case."

**GAROFALO** "I was trying to read all of this letter that the resident down there wrote. She talks almost entirely in this letter about safety at that intersection. I haven't had a chance, really, to read all of it, but I was wondering if a site plan should take into consideration maybe some of this stuff that she was talking about. She goes on for like three pages about concerns about safety at that intersection and that there has been a large number of accidents and she mentions in here something about a previous car lot that was in that location. She says there is an auction and they use side streets and turn around and come back southbound, etc. She says 'my son asked me one day why I was doing this as I turned around and headed back to the bridge and I asked him if he saw all of those cars parked in that lot? They make it hard to see traffic on Broadway and it is going to cause an accident. As I pointed, the car directly in front of me collided at the intersection with a lurch and a sickening crunch. Though I was a witness, I cannot say who was at fault. The hump of the bridge obscured my view of the line. My son has learned to respect this corner'.

Apparently there has been a number of other accidents. I think maybe the site plan, when approved, should take this into consideration, or look into some of the safety aspects that she refers to here. This could create a problem with a bunch of cars obscuring the site there. That is a main road heading down toward Wellington."

**BARFIELD** "Commissioner Warren said we were not to be considering public safety as an issue."

**MOTION:** The motion carried unanimously with 12 votes in favor.

**CARROLL** "Okay, we will get an approved site plan."

9. **Case No. CUP2000-00016 (DP-59 Amendment #7)** - Salah Jamaledidine (Owner/Applicant); Ferris Consulting c/o Greg Ferris (Agent) requests an amendment to the Farmington Square CUP to permit ancillary parking area on Parcel 9 of property described as:

That part of Block 5, Farmington Square 2nd Addition, Wichita, Sedgwick County, Kansas, described as beginning at the Southeast corner of Lot 1, Winterset Plaza Addition, Wichita, Sedgwick County, Kansas; thence North along the East line of said Lot 1, a distance of 284.89 feet; thence East along the extended North line of said Lot 1, a distance of 60.0 feet; thence South parallel with the East line of said Lot 1, a distance of 284.89 feet; thence West 60.0 feet to the point of beginning. Generally located south of Central and east of Winterset.

**SCOTT KNEBEL**, Planning staff, pointed out land use and zoning and showed slides of the general area. He reviewed the following staff report:

**BACKGROUND:** The applicant is requesting an amendment to the Farmington Square CUP (DP-59) to permit an ancillary parking area on Parcel 9. The zoning of Parcel 9 is "TF-3" Two-Family Residential, and the only permitted use on Parcel 9 is floodway reserve.

Ancillary parking areas are permitted in the "TF-3" district with a Conditional Use when the parking area is adjacent to a principal use located on property in a more intensive zoning district. When a property is located in a CUP, a Conditional Use request is processed as a CUP amendment.

The applicant submitted a site plan (attached) that shows a 0.39 acre ancillary parking area containing 54 spaces that is located east of an existing commercial building. The existing commercial building requires additional parking spaces for the proposed use (a restaurant) to comply with the parking regulations of the Unified Zoning Code. The only undeveloped property adjacent to the site of the existing commercial building is the property to the east in Parcel 9 of the Farmington Square CUP.

The storm water engineer for the City of Wichita has reviewed the proposed use of 0.39 acres of the floodway reserve for an ancillary parking area. The storm water engineer has approved the proposed use as long as any fill that has been improperly placed on the property is removed prior to construction and there are no obstructions placed above natural ground (see attached letter).

The character of the surrounding area is predominately commercial with vacant property to the south zoned for multi-family use. The Wichita-Valley Center Flood Control Way (Big Ditch) is located east of the subject property. Property north and west of the subject property is developed with retail, office, and recreation uses on property zoned "LC" Limited Commercial.

**CASE HISTORY:** The subject property is platted as part of Lot 1, Block 5 Farmington Square 2<sup>nd</sup> Addition, which was recorded April 23, 1981. The subject property is located within the Farmington Square CUP, which was originally approved February 12, 1974 and has been amended several times since that date.

**ADJACENT ZONING AND LAND USE:**

|        |        |   |
|--------|--------|---|
| NORTH: | "LC"   | Retail, restaurant, office                    |
| SOUTH: | "TF-3" | Undeveloped                                   |
| EAST:  | "TF-3" | Floodway reserve                              |
| WEST:  | "LC"   | Retail, office, indoor and outdoor recreation |

**PUBLIC SERVICES:** This site has access to Winterset, an extra-wide two-lane local street. Traffic volumes are not available for Winterset. Municipal services are available to this site.

**CONFORMANCE TO PLANS/POLICIES:** The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for "Low-Density Residential" development. The Unified Zoning Code permits ancillary parking areas in low-density residential areas with a Conditional Use (or CUP amendment) when adjacent to a principal use located in a more intensive zoning district. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas.

**RECOMMENDATION:** Based upon information available prior to the public hearing, planning staff recommends that the request be APPROVED, subject to the following conditions:

1. The location of the ancillary parking area on Parcel 9 shall be designated on the CUP plan.
2. The permitted uses for Parcel 9 shall be modified to add: "Ancillary parking area only in designated area and only if the grade is not raised above the natural grade to the north and south and no other obstructions are placed above that grade without written approval from the City's storm water engineer."
3. Prior to the issuance of a building permit, any fill that has been improperly placed on the property shall be removed and the property shall be returned to the natural grade north to south.
4. Within 30 days after approval of this amendment by the Governing Body, the applicant shall submit a revised site plan that indicates the location of the floodway boundary and removes the proposed cedar screening fence (above ground obstruction) from the perimeter of the parking area. The site shall be developed in general conformance with the approved site plan. All improvements shall be completed before the facility becomes operational.
5. General Provision #18 shall be modified to add Parcel 9 to the list of parcels for which development is subject to the Landscape Ordinance.
6. The development of this property shall proceed in accordance with the development plan as recommended for approval by the Planning Commission and approved by the Governing Body, and any substantial deviation of the plan, as determined by the Zoning Administrator and the Director of Planning, shall constitute a violation of the building permit authorizing construction of the proposed development.
7. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
8. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 30 days after approval of this amendment by the Governing Body, or the request shall be considered denied and closed.

The staff's recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The character of the surrounding area is predominately commercial with vacant property to the south zoned for multi-family use. The Wichita-Valley Center Flood

Control Way (Big Ditch) is located east of the subject property. Property north and west of the subject property is developed with retail, office, and recreation uses on property zoned "LC" Limited Commercial.

2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned "TF-3" Two-Family Residential and is restricted by the Farmington Square CUP to use as a floodway reserve. The subject property is the only undeveloped property adjacent to the site of the existing commercial building that is available for the ancillary parking area.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Any detrimental affects on properties from lighting, noise, and other factors should be mitigated by the requirements of the Unified Zoning Code and the Landscape Ordinance.
4. Conformance of the requested change to adopted or recognized Plans/Policies: The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for "Low-Density Residential" development. The Unified Zoning Code permits ancillary parking areas in low-density residential areas with a Conditional Use (or CUP amendment) when adjacent to a principal use located in a more intensive zoning district. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas.
5. Impact of the proposed development on community facilities: The use of this property should have limited impact on community facilities.

**KNEBEL** "The applicant has requested an ancillary parking area on Parcel 9 of this, which is in 'TF-3' zoning. Ancillary parking is permitted in the 'TF-3' zoning district with a Conditional Use if it is adjacent to a more intensive zoning district, which is the case in this instance. Since it is in a CUP, it requires an amendment, rather than a Conditional Use.

The particular Parcel in question, Parcel 9, which is the entire yellow area you see there, is restricted in use to floodway reserve. The Stormwater Engineer has reviewed the request to use a small portion of this site for parking and is in agreement that it is an acceptable use of this portion of the site as long as any fill that has been improperly placed on the site is removed and as long as there are no above-ground obstructions. This particular site is located primarily in a commercial area, although there is some vacant ground to the south, which is approved for multi-family zoning.

The Planning staff has recommended that this application be approved, subject to several conditions. A couple of those deal with providing improvements to the CUP that has been turned in. We would like for the area of the parking area be designated on the face of the CUP and that the permitted use for ancillary parking be added to the list of uses for just that portion of Parcel No. 9. We require that prior to the issuance of a building permit that any fill that has been placed improperly on the site be removed and that the site plan that is submitted by the applicant which indicates a cedar fence along the parking lot be revised to remove that fence since that is an above-ground obstruction. I am available for questions."

**LOPEZ** "Will you go back to the photograph of the building that the parking is going to benefit? Is that it?"

**KNEBEL** "No. Actually, that is the corner of it there in that picture and this is it directly. And then, the parking would be in this location over here (Indicating)."

**LOPEZ** "But it is going to require fill?"

**KNEBEL** "No, the parking will have to be at a lower level. The people will have to walk uphill to the property."

**LOPEZ** "Okay, thank you."

**HENTZEN** "Is that restaurant building still empty?"

**KNEBEL** "This building was empty when I was there, yes."

**HENTZEN** "It is not finished inside, is it?"

**KNEBEL** "No, it isn't."

**HENTZEN** "Okay."

**GAROFALO** "Are there any other questions of Scott? Okay, we will hear from the applicant."

**GREG FERRIS** "Thank you Mr. Chair, members of the Planning Commission. I represent the applicant to this property. I see on the sheet that for some reason, staff thought I was going to be long-winded and allowed 30 minutes. I am going to give you a chance to really catch up here.

I only have a couple of comments. One, on the discussion of site plans, the site plan was professionally done. It was also specifically stated to him not to put the wood fence in there, and he still did. We will take care of that because no only do

we not want to have to pay for it, we would not be allowed to do it as well. We concur with all of the recommendations submitted by the Planning staff with a couple of minor exceptions.

In recommendation No. 4, we would like 60 days to submit the appropriate surveys. The only reason I say that is that right now, the market is still a little tough getting surveys done. We would like a little extra time just to make sure that we don't have to get letters. That would be the same comment for No. 8; we would like 45 days. Staff might consider modifying those in their standard recommendations. It has been a little harder to get stuff turned around in the last several weeks.

The only other exception we would like is on No. 5. We would like it removed. Really, the reason we want it removed is that the Stormwater Engineer is not going to allow us to do any landscaping. He won't let us plant trees, he won't let us plant bushes. We won't be able to plant anything above ground. This backs up to a floodway so the need for landscaping should not be necessary, so we don't see any reason to add this because later somebody will ask us to then landscape it, but yet the Stormwater Engineer won't allow us to landscape it, and we will have an issue between staff. Other than that, we would ask for your approval, and would be glad to answer any questions."

**GAROFALO** "Are there any questions for Greg? Commissioner Osborne-Howes?"

**OSBORNE-HOWES** "Is this in the flood plain and not in the floodway?"

**FERRIS** "It is actually in the floodway reserve. That is why we are not allowed to put anything above grade."

**OSBORNE-HOWES** "Just cement?"

**FERRIS** "Asphalt, actually."

**GAROFALO** "Are there any other questions? Thanks, Greg. Is there anyone else to speak in approval of this request? Is there anyone to speak in opposition? Seeing none, we will bring it back."

**MOTION:** Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The character of the surrounding area is predominately commercial with vacant property to the south zoned for multi-family use. The Wichita-Valley Center Flood Control Way (Big Ditch) is located east of the subject property. Property north and west of the subject property is developed with retail, office, and recreation uses on property zoned "LC" Limited Commercial. The suitability of the subject property for the uses to which it has been restricted: The property is zoned "TF-3" Two-Family Residential and is restricted by the Farmington Square CUP to use as a floodway reserve. The subject property is the only undeveloped property adjacent to the site of the existing commercial building that is available for the ancillary parking area. Extent to which removal of the restrictions will detrimentally affect nearby property: Any detrimental affects on properties from lighting, noise, and other factors should be mitigated by the requirements of the Unified Zoning Code and the Landscape Ordinance. Conformance of the requested change to adopted or recognized Plans/Policies: The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for "Low-Density Residential" development. The Unified Zoning Code permits ancillary parking areas in low-density residential areas with a Conditional Use (or CUP amendment) when adjacent to a principal use located in a more intensive zoning district. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. Impact of the proposed development on community facilities: The use of this property should have limited impact on community facilities.) I move that we recommend to the governing body that the request be approved, subject to the following:

1. The location of the ancillary parking area on Parcel 9 shall be designated on the CUP plan.
2. The permitted uses for Parcel 9 shall be modified to add: "Ancillary parking area only in designated area and only if the grade is not raised above the natural grade to the north and south and no other obstructions are placed above that grade without written approval from the City's storm water engineer."
3. Prior to the issuance of a building permit, any fill that has been improperly placed on the property shall be removed and the property shall be returned to the natural grade north to south.
4. Within 60 days after approval of this amendment by the MAPC or Governing Body, as applicable, the applicant shall submit a revised site plan that indicates the location of the floodway boundary and removes the proposed

cedar screening fence (above ground obstruction) from the perimeter of the parking area. The site shall be developed in general conformance with the approved site plan. All improvements shall be completed before the facility becomes operational.

5. The development of this property shall proceed in accordance with the development plan as recommended for approval by the Planning Commission and approved by the Governing Body, and any substantial deviation of the plan, as determined by the Zoning Administrator and the Director of Planning, shall constitute a violation of the building permit authorizing construction of the proposed development.
6. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
7. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 45 days after approval of this amendment by the MAPC or Governing Body, as applicable or the request shall be considered denied and closed.

**HENTZEN** moved, **MICHAELIS** seconded the motion.

**GAROFALO** "Is there any discussion?"

**BARFIELD** "Why did you put 30 days on No. 5 and 45 on No. 8?"

**HENTZEN** "That was what he asked for."

**BARFIELD** "I'm sorry, I thought he asked for 60 on both of them."

**MCKAY** "He asked for 60 on one and 45 on the other."

**BARFIELD** "Okay. No other discussion?"

**VOTE ON THE MOTION:** The motion carried with 12 votes in favor. There was no opposition.

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10. **Case No. ZON2000-00021** - Mid American Credit Union (c/o Lowell E. Richardson, owner); PEC c/o Gary Wiley, agent) request zone change from "LC" Limited Commercial to "GC" General Commercial on property described as:

Lot 1, First Credit Union Addition, Wichita, Kansas, Sedgwick County, Kansas. as show by the last deed of record filed in the Office of the Register of Deeds, Sedgwick County, Kansas. Generally located south of McCormick and east of Tyler Road (8410 West Kellogg).

**BARRY CARROLL**, Planning staff, pointed out land sue and zoning; and showed slides of the general area. He reviewed the following staff report:

**BACKGROUND:** The application area is located south of McCormick, east of Tyler along Kellogg Drive and north of west Kellogg. Currently the "Kansas Credit Union" building is located on the application area which is zoned "LI" Limited Commercial. The site is a platted lot containing .77 acres. Access to the site is from McCormick from the north and Kellogg Drive from the south. The applicant owns a lot to the west that is zoned "GC" General Commercial and a lot to the east that is also zoned "GC." Both of these lots contain existing buildings. The applicant would like for the entire ownership (three lots) to be zoned "GC."

The City of Wichita and the applicant have recently negotiated a right-of-way agreement for the proposed expansion of West Kellogg. As a result, the applicant intends to demolish all three of his buildings and construct one large credit union on-site. Since the credit union routinely has clients who default on their loans for vehicles and boats, the applicant wants to display repossessed items on-site until they are sold.

Surrounding uses include a shopping center (Home Depot) located immediately north and is zoned "LC" Limited Commercial. To the west is a liquor store and it is zoned "GC" General Commercial. To the east is the "Mid America Credit Union" and is zoned "GC." To the south, and across West Kellogg, are various businesses that are zoned "LI" Limited Industrial. If approved, the applicant will need to comply with the City's Landscaping Ordinance.

**CASE HISTORY:** The First Credit Union Addition was platted in 1985.

**ADJACENT ZONING AND LAND USE:**

NORTH: "LC", Limited Commercial [shopping center]  
EAST: "GC" General Commercial [credit union]

SOUTH: "LI" Limited Industrial [businesses]  
WEST: "GC" General Commercial [liquor store]

**PUBLIC SERVICES:** Public sanitary sewer and water service are currently available to this location.

**CONFORMANCE TO PLANS/POLICIES:** The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for "commercial" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterial streets and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The Commercial Locational Guidelines also recommend that auto-related commercial uses should be guided to cluster in areas and streets where these uses may already exist or to locations where traffic patterns, surrounding land uses, and utilities can support these activities.

**RECOMMENDATION:** Based on the information available prior to the public hearing, MAPD staff recommends the application be APPROVED.

This recommendation is based on the following findings:

4. The zoning, uses and character of the neighborhood: Adjacent properties are zoned "LC", Limited Commercial, "GC", General Commercial and "LI" Limited Commercial. The overwhelming majority of uses surrounding this site are developed with commercial uses.
5. The suitability of the subject property for the uses to which it has been restricted: The "GC" General Commercial district permits a multitude of uses that are appropriate and compatible with existing uses and zoning.
6. Extent to which removal of the restrictions will detrimentally affect nearby property: This site is currently surrounded by commercial uses. Approval of this request should not negatively impact nearby properties.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for "commercial" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterial streets and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The Commercial Locational Guidelines also recommend that auto-related commercial uses should be guided to cluster in areas and streets where these uses may already exist or to locations where traffic patterns, surrounding land uses, and utilities can support these activities.
5. Impact of the proposed development on community facilities: Public sewer and water is available to this site.

**CARROLL** "West Kellogg is being improved at this area. The area is surrounded by commercial uses. The applicant owns the lot to the east that is zoned 'GC'; to the west that is also zoned 'GC'. He would like to have the one in the middle zoned 'GC' just to combine all three to the same zoning. We are recommending approval. I will answer any questions that you have, and Gary Wiley, the agent is here to answer your questions."

**MCKAY** "I have a question of Marvin. I own part of the property across Kellogg on the south side. Is that a conflict of interest?"

**KROUT** "I think it would probably be appropriate for you to step down."

**MCKAY** "Okay, I will step down."

**GAROFALO** "Commissioner McKay will abstain from discussion and voting. Are there any questions? Has anyone been contacted in regard to this matter? Okay."

**HENTZEN** "Barry, there are two credit unions along there, aren't there?"

**CARROLL** "Yes."

**HENTZEN** "Isn't one of them having part of their property being taken for the highway development?"

**CARROLL** "As I understand it, West Kellogg is being expanded and the applicant intends to demolish the three buildings and build a new building. I'm glad you asked that."

**GAROFALO** "Okay, we will hear from the applicant, then."

**GARY WILEY** "I am here on behalf of the applicant. I believe that this is the first time that I have no staff comments that I have to agree with. And Bud, you are right; those buildings are all being demolished and one new facility will be constructed."

**GAROFALO** "Okay. Is there anyone else to speak in favor of this application? Is there anyone opposed? Seeing none I will bring it back to the Commission."

**MOTION:** Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: Adjacent properties are zoned "LC", Limited Commercial, "GC", General Commercial and "LI" Limited Commercial. The overwhelming majority of uses surrounding this site are developed with commercial uses. The suitability of the subject property for the uses to which it has been restricted: The "GC" General Commercial district permits a multitude of uses that are appropriate and compatible with existing uses and zoning. Extent to which removal of the restrictions will detrimentally affect nearby property. This site is currently surrounded by commercial uses. Approval of this request should not negatively impact nearby properties. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for "commercial" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterial streets and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The Commercial Locational Guidelines also recommend that auto-related commercial uses should be guided to cluster in areas and streets where these uses may already exist or to locations where traffic patterns, surrounding land uses, and utilities can support these activities. Impact of the proposed development on community facilities: Public sewer and water is available to this site.) I move that we recommend to the governing body that the request be approved, subject to staff comments.

**WARREN** moved, **HENTZEN** seconded the motion, and it carried with 11 votes in favor. There was no opposition. McKay abstained.

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11. **CUP2000-00019** (DP-74 Amendment #3) - Storage Equities-PS Partners IV c/o Les Guttman (Owner); Sprint Spectrum LP c/o James G. Meyers (Applicant); Tower Resource Management and Richard Conner Riley and Associates (Agents) request an amendment the Briarwood Commercial CUP to permit a commercial communication tower on Parcel 1 of property described as:

Lot 1, Block 1, Briarwood Addition, Wichita, Sedgwick County, Kansas. Generally located north of the Kansas Turnpike (I-35) and east of Woodlawn.

**SCOTT KNEBEL**, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

**BACKGROUND:** The applicant is seeking an amendment to the Briarwood Commercial CUP (DP-74) to permit the construction of a 90 foot high commercial communication monopole for use by Sprint PCS. The proposed site is zoned "GC" General Commercial. The Unified Zoning Code permits commercial communication towers in the "GC" General Commercial district; however, the Briarwood Commercial CUP does not include commercial communication towers as a permitted use, thus necessitating the requested amendment.

The monopole will be sited on a 1,600 square foot area located immediately north of the Kansas Turnpike (I-35) and approximately 850 feet east of Woodlawn. Access to the site is to be from Woodlawn via an easement through an existing Public Storage self-service storage warehouse development. The applicant's site plan (attached) depicts a 40-foot by 40-foot compound enclosed by a 7-foot high chain link fence with barbed wire. Within the enclosure would be a 90-foot high monopole, an equipment shelter, and various utilities.

Due to the site's location under the approach to McConnell Air Force Base, planning staff contacted the administration at McConnell, who indicated that the proposed site is acceptable and will not interfere with their operations. If required by the Federal Aviation Administration, the monopole would be constructed with a flashing red aircraft warning light. Also, the site is located within Area B of the Wichita-Sedgwick County Airport Hazard Zoning Map, which requires a permit exemption for structures (such as the proposed 90-foot high monopole) that exceed 75 feet in height.

The character of the surrounding area is primarily commercial, with the nearest residences being the Ashbury Court apartments located approximately 350 feet to the southwest and single family residences in the Lincoln Hills Second Addition located approximately 900 feet to the northwest. North of the site is an undeveloped city maintenance yard and a commercial area developed with a golf driving range, self-service storage warehouses, and retail and warehouse uses on property zoned "GC" General Commercial. East of the site is an undeveloped site approved for future development of self-service storage warehouses on property zoned "GC" General Commercial. South of the site across the Kansas Turnpike is undeveloped property zoned "GC" General Commercial and "LI" Limited Industrial. The property west of the site is developed with self-service storage warehouses and apartments on property zoned "GC" General Commercial.

The applicant's justification for the request (attached) indicates this site is necessary for Sprint PCS to provide coverage along the Kansas Turnpike and to relieve capacity problems in an area generally bounded by Harry, Pawnee, Rock, and Webb. At the request of planning staff, the applicant reviewed 6 alternative structures/towers in the vicinity of the proposed site (see attached letter) to determine if they were acceptable alternatives to constructing a new monopole. Of those, the applicant determined the Cessna Park site to be unacceptable because it is too close to single family residences. The applicant determined that the Booth School site is unacceptable because it is not a site identified by the school district as an approved site for co-location of commercial communication equipment. The applicant determined that two churches in the area with steeples are unacceptable because they are outside Sprint's coverage objectives. A private dispatch tower located at a contractor's warehouse was determined to be unacceptable because the landowner was not willing to lease the site for the proposed monopole. An existing monopole located at Pawnee and Oliver was determined to be unacceptable because it is outside Sprint's coverage objectives.

At the time this staff report was prepared, the MAPC was scheduled to hold a public hearing on a "Wireless Communication Master Plan" and associated amendments to the Unified Zoning Code. These proposed changes include design guidelines for new commercial communication towers, and staff's recommended conditions of approval are intended to bring the proposed new tower into general compliance with the proposed design guidelines.

**CASE HISTORY:** The site is platted as part of the Briarwood Addition, recorded October 6, 1975. The site is within the Briarwood Commercial CUP (DP-74), which was approved September 16, 1975 and amended February 26, 1980 and June 26, 1984.

**ADJACENT ZONING AND LAND USE:**

|        |             |   |
|--------|-------------|---|
| NORTH: | "GC"        | Undeveloped; Recreation and Entertainment, Outdoor; Warehouse, Self-service Storage; Retail, General; Warehousing |
| SOUTH: | "GC" & "LI" | Undeveloped   |
| EAST:  | "GC"        | Undeveloped   |
| WEST:  | "GC"        | Warehouse, Self-service Storage; Multi-Family   |

**PUBLIC SERVICES:** No municipally supplied public services are required. The site has access to Woodlawn, a four-lane arterial with 1997 traffic volumes of approximately 10,000 vehicles per day. The proposed 2030 Transportation Plan estimates that traffic volumes on Ridge will increase to 14,000 vehicles per day.

**CONFORMANCE TO PLANS/POLICIES:** The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Industrial" development. The plan does not speak specifically to telephone or cellular phone service, however there is a statement indicating the need to provide the highest quality utility services to the public at a reasonable cost. Section III.D.6.g of the Unified Zoning Code lists five conditions that commercial communication towers are subject to meeting: unobtrusive paint scheme, no nighttime lighting of the tower except for aircraft warning lighting, no advertising, demonstrating that an effort has been made to co-locate on an existing tower, and willingness to provide space for two other wireless communication providers on the tower.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

- A. All requirements of Section III.D.6.g. of the Unified Zoning Code shall be met.
- B. Within 30 days after approval of this amendment by the Governing Body, the applicant shall submit a revised copy of the site plan to the Metropolitan Area Planning Department. The revised site plan shall show the approved dimensions for monopole height and lease area. The site shall be developed in general conformance with the approved site plan. All improvements shall be completed before the facility becomes operational.
- C. The support structure shall be a "monopole" design that is silver or gray or a similar unobtrusive color with a matte finish to minimize glare.
- D. The monopole shall not exceed 90 feet in height and shall be designed and constructed to accommodate communication equipment for at least three wireless service providers.
- E. The monopole and its foundation shall be designed and constructed in such a manner that permits future height extensions of up to 30 feet and future loading expansions to accommodate communication equipment for at least four wireless service providers.
- F. The 40 foot by 40 foot site for the monopole shall be shown on the CUP plan, and the proposed uses for Parcel 1 shall be modified to add: "Commercial communication tower only in designated area."
- G. The designated outside storage areas shall be modified to remove the site of the monopole from the areas approved for outside storage.
- H. The building setback line along the Kansas Turnpike shall be modified on the face of the CUP for that portion of the monopole site that is shown within the building setback area on the plan. Only the monopole site shall be exempted the building setback along the Kansas Turnpike, with a 30 foot building setback remaining on the plan for the remainder of the Kansas Turnpike frontage.
- I. The development of this property shall proceed in accordance with the development plan as recommended for approval by the Planning Commission and approved by the Governing Body, and any substantial deviation of the plan, as determined by the Zoning Administrator and the Director of Planning, shall constitute a violation of the building permit authorizing construction of the proposed development.



- J. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
- K. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 30 days after approval of this amendment by the Governing Body, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The character of the surrounding area is primarily commercial, with the nearest residences being the Ashbury Court apartments located approximately 350 feet to the southwest and single family residences in the Lincoln Hills Second Addition located approximately 900 feet to the northwest. North of the site is an undeveloped city maintenance yard and a commercial area developed with a golf driving range, self-service storage warehouses, and retail and warehouse uses on property zoned "GC" General Commercial. East of the site is an undeveloped site approved for future development of self-service storage warehouses on property zoned "GC" General Commercial. South of the site across the Kansas Turnpike is undeveloped property zoned "GC" General Commercial and "LI" Limited Industrial. The property west of the site is developed with self-service storage warehouses and apartments on property zoned "GC" General Commercial.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "GC" General Commercial. Commercial communication towers are permitted uses in the "GC" General Commercial district; however, the Briarwood Commercial CUP does not include commercial communication towers as a permitted use, thus necessitating the requested amendment.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The site is currently undeveloped. The closest properties developed with residential uses are located approximately 350 feet to the southwest and 900 feet to the northwest. No evidence has been presented to date that the construction of a monopole will detrimentally affect nearby property to a greater degree than will the development of the site with commercial or industrial uses, which is indicated by the Comprehensive Plan as being the likely future development of the site. The only impact to be noted at the time this report was prepared is the visual impact of a monopole.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Industrial" development. The plan does not speak specifically to telephone or cellular phone service, however there is a statement indicating the need to provide the highest quality utility services to the public at a reasonable cost. Section III.D.6.g of the Unified Zoning Code lists five conditions that commercial communication towers are subject to meeting: unobtrusive paint scheme, no nighttime lighting of the tower except for aircraft warning lighting, no advertising, demonstrating that an effort has been made to co-locate on an existing tower, and willingness to provide space for two other wireless communication providers on the tower.
5. Impact of the proposed development on community facilities: No impacts have been identified as municipally supplied services are not required.

**KNEBEL** "The applicant is seeking this amendment to the Briarwood Commercial CUP to permit the construction of a 90-foot high commercial communication monopole, which would be used by Sprint PCS. The proposed site is zoned general commercial and is highlighted on the slide. The Unified Zoning Code permits commercial communication towers in the General Commercial district, however they are not permitted by the Briarwood Commercial CUP, thus necessitating the amendment. This is the type of application that an administrative approval would be able to be provided for under the proposed amendments to the Zoning Code that we discussed at the last meeting.

The applicant has submitted a site plan that shows the location of the monopole on the site. It would be located approximately 850 feet east of Woodlawn, and access to the site would be through the self-storage facility. The planning staff contacted McConnell Air Force Base regarding this, since this is within the approach to the runway and they indicated that they did not have a problem with it, but that they would review it further, along with the Federal Aviation Administration (FAA), and likely the tower will be required to have a flashing red warning light on the top of it.

The character of the neighborhood is primarily commercial. There is a golf driving range to the north and some vacant property that is owned by the City of Wichita for a future maintenance yard. To the east of the site and to the south of the site is the Kansas Turnpike. Southwest of the site is Cessna's Pawnee facility. The nearest residences to the site are some apartments along Woodlawn, which are west of the location approximately 350 feet. At the request of staff, the applicant did look at several other sites in the area to see if they would be suitable for use, rather than constructing a commercial communication tower at this location.

The documentation that the applicant has provided is attached to the staff report and staff believes that they have met the requirement of demonstrating that the tower is required. Therefore, staff recommends that the application be approved. We are looking for a revised site plan as a condition of approval. There are several numbers that have heights and distances on the site plan that was submitted that are inconsistent with the application material, and we are asking that the site plan be consistent with the application material regarding the height of the tower and the size of the enclosed area. We are requiring that this be a monopole and have an unobtrusive color and matte finish to minimize glare. We are

asking that the height be limited to 90 feet, but that the tower be designed so that it could be extended 30 feet and therefore provide for a fourth carrier in the future, and we are requiring that several modifications be made to the Community Unit Plan that was submitted that would more clearly designate the area to be approved, and more clearly designate that the commercial communication tower would only be permitted within that one single compound on the site. I am available for questions."

**MCKAY** "Mr. Chair, I own the golf course driving range. Is that a conflict of interest?"

**KROUT** "Do you believe it has an effect on how you are looking at this case?"

**MCKAY** "It doesn't, but I don't want.... I will just step down."

**KROUT** "If you think there may be an appearance of a conflict of interest, you probably should."

**BARFIELD** "We are seeing quite a few of these towers. Do you anticipate that there will be any applications to add onto this facility?"

**KNEBEL** "I suspect that there would be, yes. Typically, what I have found, in talking to other carriers is that since Sprint and a couple of the other carriers were the first ones into the market, that as they expand their services to other areas, other companies then find that they are also needing to expand their services into the same areas and are looking to locate on the towers that Sprint or some of the other companies that entered the market first constructed."

**BARFIELD** "With that in mind, why are we suggesting they only make it 90 feet then?"

**KNEBEL** "Actually, the applicant has requested 90 feet, and we are agreeing with that request and suggesting that the pole be constructed in such a manner that if it is necessary that it be increased in height by 30 feet in the future."

**GAROFALO** "Scott, I have a question. The possibility of an extension, was McConnell apprised of that?"

**KNEBEL** "No, I did not discuss that with them, and of course if it were to be extended in the future, it would be subject to review and the issues regarding that would be addressed at that time. But if you don't construct the 90-foot tower today in such a manner that it can be extended, then that option is lost."

**WARREN** "I think their minimums there are over 1,000 feet though. They can't go below that."

**GAROFALO** "I don't know, but as far as the Air Base...."

**WARREN** "Oh, you are way below anything McConnell could fly in there. They are going to have an accident if they fly much lower."

**GAROFALO** "They fly pretty low."

**WARREN** "Not there, they don't."

**KNEBEL** "Well, this is in the approach to McConnell. It is about a mile and a half north of the runway."

**GAROFALO** "But if it was to be extended, they would look at it."

**KNEBEL** "Yes, it would have to be reviewed."

**MICHAELIS** "Is the applicant here? Okay, maybe this is a question for him. Would it behoove us, when we are doing this to look at it from a standpoint that if we are going to be looking at 120 feet to do 120 feet now and not have to come back and go through this same process six month down the road."

**KNEBEL** "No, that is not the policy that is outlined in the Wireless Communication Master Plan, and I don't think it is anything that staff would recommend to you. I think the interest is to have the tower at the lowest height possible, but to preserve the option that if, in the future, a higher tower is needed, that it can be done cheaply and easily, but not automatically assume that it is necessary, just because you have one applicant that is requesting 90 feet in a particular location."

**KROUT** "Also that with the new plan that there will be extensions that can happen administratively and don't require resubmitting for a public hearing."

**MARNELL** "Scott, don't you run the risk of doing this with every case, that you are going to do what happened there at Carriage Park where you put a really big base in, where if that truly doesn't come to pass?"

**KNEBEL** "That is a risk, that is true. We considered that, and given the remote location and the fact that this is pretty well hidden and with the exception of being along the Turnpike is not easily seen, at least not the base of the tower. We considered that preserving the option outweighed the issue of having a wider base in this instance. But it might not always be."

**KROUT** "In the case at Central and Edgemoor, too, I think what happened was they put in a structure that is capable of going from 120 feet to 200 feet and we are not asking for that in this extension. That is why that looks out of scale, I think."

**GAROFALO** "Are there any other questions of Scott? If not, we will hear from the applicant."

**MICHAEL ANDERSON** "I am with Richard Conner Riley and Associates at 511 Delaware, Kansas City, Missouri. We have worked with Mr. Knebel and have found a location that is zoned General Commercial. It is commercial areas all surrounding there. There is the freeway, there is a drainage dedication. It works well for Sprint; it works well within your Zoning Ordinance; there is no affect and impact on neighboring areas. Therefore, we ask for approval of the amendment.

There are two things that I want to discuss. Mr. Knebel did have a number of recommendations, and we are fine with all of them, although we do ask that the 30 days on point B and point K be changed to 60 days. As was discussed earlier, getting drawings correct and getting a surveyor right now is a little tight, so we ask for a little extra time to get that done. Thank you."

**WARREN** "What item was that?"

**ANDERSON** "Items B and K."

**GAROFALO** "Are there any questions of the agent? Okay, thank you. Is there anyone else to speak in favor of this application? Anyone to speak in opposition? Seeing none, we will take it back."

**MOTION:** Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The character of the surrounding area is primarily commercial, with the nearest residences being the Ashbury Court apartments located approximately 350 feet to the southwest and single family residences in the Lincoln Hills Second Addition located approximately 900 feet to the northwest. North of the site is an undeveloped city maintenance yard and a commercial area developed with a golf driving range, self-service storage warehouses, and retail and warehouse uses on property zoned "GC" General Commercial. East of the site is an undeveloped site approved for future development of self-service storage warehouses on property zoned "GC" General Commercial. South of the site across the Kansas Turnpike is undeveloped property zoned "GC" General Commercial and "LI" Limited Industrial. The property west of the site is developed with self-service storage warehouses and apartments on property zoned "GC" General Commercial. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "GC" General Commercial. Commercial communication towers are permitted uses in the "GC" General Commercial district; however, the Briarwood Commercial CUP does not include commercial communication towers as a permitted use, thus necessitating the requested amendment. Extent to which removal of the restrictions will detrimentally affect nearby property: The site is currently undeveloped. The closest properties developed with residential uses are located approximately 350 feet to the southwest and 900 feet to the northwest. No evidence has been presented to date that the construction of a monopole will detrimentally affect nearby property to a greater degree than will the development of the site with commercial or industrial uses, which is indicated by the Comprehensive Plan as being the likely future development of the site. The only impact to be noted at the time this report was prepared is the visual impact of a monopole. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Industrial" development. The plan does not speak specifically to telephone or cellular phone service, however there is a statement indicating the need to provide the highest quality utility services to the public at a reasonable cost. Section III.D.6.g of the Unified Zoning Code lists five conditions that commercial communication towers are subject to meeting: unobtrusive paint scheme, no nighttime lighting of the tower except for aircraft warning lighting, no advertising, demonstrating that an effort has been made to co-locate on an existing tower, and willingness to provide space for two other wireless communication providers on the tower. Impact of the proposed development on community facilities: No impacts have been identified as municipally supplied services are not required.) I move that we recommend to the governing body that the request be approved, subject to the following:

1. All requirements of Section III.D.6.g. of the Unified Zoning Code shall be met.

2. Within 60 days after approval of this amendment by the MAPC or Governing Body, as applicable, the applicant shall submit a revised copy of the site plan to the Metropolitan Area Planning Department. The revised site plan shall show the approved dimensions for monopole height and lease area. The site shall be developed in general conformance with the approved site plan. All improvements shall be completed before the facility becomes operational.
3. The support structure shall be a "monopole" design that is silver or gray or a similar unobtrusive color with a matte finish to minimize glare.
4. The monopole shall not exceed 90 feet in height and shall be designed and constructed to accommodate communication equipment for at least three wireless service providers.
5. The monopole and its foundation shall be designed and constructed in such a manner that permits future height extensions of up to 30 feet and future loading expansions to accommodate communication equipment for at least four wireless service providers.
6. The 40 foot by 40 foot site for the monopole shall be shown on the CUP plan, and the proposed uses for Parcel 1 shall be modified to add: "Commercial communication tower only in designated area."
7. The designated outside storage areas shall be modified to remove the site of the monopole from the areas approved for outside storage.
8. The building setback line along the Kansas Turnpike shall be modified on the face of the CUP for that portion of the monopole site that is shown within the building setback area on the plan. Only the monopole site shall be exempted the building setback along the Kansas Turnpike, with a 30 foot building setback remaining on the plan for the remainder of the Kansas Turnpike frontage.
9. The development of this property shall proceed in accordance with the development plan as recommended for approval by the Planning Commission and approved by the Governing Body, and any substantial deviation of the plan, as determined by the Zoning Administrator and the Director of Planning, shall constitute a violation of the building permit authorizing construction of the proposed development.
10. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
11. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 60 days after approval of this amendment by the MAPC or Governing Body, as applicable, or the request shall be considered denied and closed.

**LOPEZ** moved, **PLATT** seconded the motion.

**GAROFALO** "Is there any discussion?"

**VOTE ON THE MOTION:** The motion carried with 11 votes in favor. There was no opposition. McKay abstained.

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12. **CON2000-00019** - Russell and Nancy Knowles (owners/applicants) request a Conditional Use permit to allow a rural home occupation, on property described as:

A tract in the Southwest Quarter of Section 20, Township 25 South, Range 1 West of the Sixth Principal Meridian, Sedgwick County, Kansas described as beginning 305 feet East of the Southwest Quarter; thence East 290 feet; thence North 775 feet; thence West 290 feet; thence South 775 feet to the point of beginning EXEPT that part taken for road. Generally located east of 103<sup>rd</sup> street West (Maize Road) on the north side of 93<sup>rd</sup> Street North.

**LISA VAN DE WATER**, Planning staff, pointed out land use and zoning; and showed slides of the general area. She reviewed the following staff report:

**BACKGROUND:** The applicants are requesting a Conditional Use Permit to allow a rural home occupation on an unplatted 5.1 acre tract of land. This property is zoned "RR" Rural Residential and is located on the north side of 93<sup>rd</sup> Street North approximately 300 feet east of 103<sup>rd</sup> Street West (Maize Road). The applicant is requesting this Conditional Use Permit to allow a tractor-trailer to be parked on these 5.1 acres as part of a home occupation. The applicant is an independent truck driver and uses this vehicle for his primary income.

Sedgwick County Code Enforcement is in the process of requiring this tractor-trailer to be removed from the property or comply with the amended Unified Zoning Code (UZC). The home occupation guidelines of the UZC permit the parking of one commercial vehicle as part of a home occupation that does not exceed 26,000 pounds, gross vehicle weight rating. However, the applicant does not meet the following requirements for rural home occupations:

- Rural home occupations must be located on a minimum of 20 acres
- The rural home occupation may not be conducted within 600 feet of a dwelling wherein no rural home occupation is conducted;
- Outdoor storage is permitted provided the size of the storage area does not exceed 10,000 square feet, is located behind the principal structure and 200 feet from all property lines. Screening of the storage area by structures, solid or semi-solid fencing and/or landscape materials from adjacent roads and properties is required within 600 feet of a property line or public right-of-way.

The applicants only have 5.1 acres, their lot is only 290 feet wide, thus they are located within 600 feet of an adjacent dwelling unit, and they do not currently provide screening to the west, east, or south.

The UZC was recently amended to allow a rural home occupation as a Conditional Use that does not meet one or more of the rural home occupation requirements, as long as the property is no less than five acres in size and no more than four non-residents are employed in the home occupation. This request meets those exceptions.

The applicants have submitted a site plan that indicates the parking location of the tractor at the rear of the lot. The site plan also indicates a solid row of evergreen trees to be planted along the rear property line. Additionally, the site plans indicate that solid evergreen tree screening will be planted for 125 feet along the west and east property lines, starting at the rear property line. The parking of the tractor and trailer will be within this screened area, with the tractor to be parked adjacent to the existing 40-foot by 80-foot barn. The tractor requires an engine heater in the winter and the barn provides electricity for this purpose.

All the property adjacent to this site is zoned "RR" Rural Residential and used for residential or agricultural purposes. The lot to the west is occupied with a mobile home and horse pasture and the lot to the east is vacant.

**CASE HISTORY:** None.

**ADJACENT ZONING AND LAND USE:**

NORTH: "RR" – Agricultural uses

SOUTH: "RR" – Single-family residential and agricultural uses

EAST: "RR" – Vacant

WEST: "RR" – Single-family residential and agricultural uses

**PUBLIC SERVICES:** The site is serviced by on-site septic and well-water systems. Direct access to this site is available from 93<sup>rd</sup> Street North, a two-lane dirt section line road.

**CONFORMANCE TO PLANS/POLICIES:** The Land Use map of the Comprehensive Plan identifies this area as appropriate for "agricultural" and related uses. This category has the intent of protecting agricultural resources and is meant to accommodate agricultural operations on substantial acreage. This category can allow other uses common in rural areas that are no more offensive than normal agricultural uses.

**RECOMMENDATION:** Based on information available prior to public hearings, planning staff recommends that the request for a Conditional Use be APPROVED, subject to the following conditions:

1. The Conditional Use shall only be permitted for a home occupation involving the parking on one tractor-trailer. No other home occupations shall be conducted on-site without amending the Conditional Use Permit.
2. The applicant shall plant and maintain solid rows of evergreen trees along the north, west, and east property lines as indicated on the approved site plan to provide screening of the vehicle. The tractor is to be parked adjacent to and either south or west of the existing 40-foot by 80-foot barn at the rear of the property.
3. The applicant shall not run the vehicle for more time than is necessary for normal start-up and maintenance. Trailers that require refrigeration when parked on this site shall not be permitted.
4. The applicant shall comply with all other conditions for a rural home occupation except for the standards that were specifically waived as part of this Conditional Use Permit.
5. Any violation of the previously stated conditions shall render this Conditional Use Permit null and void.

The staff's recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding land is zoned "RR" Rural Residential. There are agricultural and single-family residential uses surrounding the site. The character of the area is predominantly agricultural.
2. Suitability of the subject property for the uses to which it has already been restricted: This site is zoned "RR" Rural Residential and developed with a single-family home. If the applicant were able to meet all the Unified

Zoning Code requirements for a rural home occupation, then the applicant would be permitted to park the tractor-trailer on this property "by-right."

3. Extent to which removal of the restrictions will detrimentally affect nearby property: The applicant has agreed to provide adequate screening of the outside storage of the tractor-trailer from surrounding residences and to park the vehicle towards the rear of the lot, off of 93<sup>rd</sup> Street North. These should help to alleviate any detrimental effect to the surrounding property owners.
4. Conformance of the requested change to adopted or recognized Plans/Policies: The Land Use map of the Comprehensive Plan identifies this area as appropriate for agricultural and related uses. This category can allow other uses common in rural areas that are no more offensive than normal agricultural uses. This request does conform to the agricultural intent of the Comprehensive Plan.
5. Impact of the proposed development on community facilities: None.

**VAN DE WATER** "This is a request to allow a rural home occupation on Rural Residential property. The applicants, Mr. and Mrs. Knowles, wish to be able to park their semi-tractor and trailer on this lot. It is 5.1 acres, roughly at the corner of Maize or 103<sup>rd</sup> Street West and 93<sup>rd</sup> Street North.

This tractor/trailer is the primary occupation of Mr. Knowles. The reason for the conditional use application is that the parking of a tractor/trailer on Rural Residential property is permitted as a rural home occupation, provided that certain criteria are met. Three of those that is not met by this application is a 20-acre minimum that the rural home occupation not be conducted within 600 feet of a residential dwelling; that outdoor storage does not exceed 10,000 square feet and is located behind the principal structure; and that screening of the area is provided.

The Unified Zoning Code, although allows a Conditional Use when these rural home occupations do not meet these criteria, this application is before you. The applicants have submitted a site plan. First, I will go into the aerial here. This is a little bit outdated. There is one mobile home that you can kind of see underneath of the property boundary. There have been some additional homes in this location and the applicant's home is on the site, but it is not shown on the aerial. There is a 40 x 80 barn that is existing at the rear of this property. The applicants wish to park the tractor and trailer at the rear of the property, as I mentioned, with the tractor being parked adjacent to the existing barn. (Indicating) These trees are actually on the applicant's property, but provide screening of the front of the property between the applicant's property and the property directly to the west.

Approval of this Conditional Use is recommended by staff, subject to a few pretty standard conditions. Only one tractor/trailer be allowed on the property as part of this Conditional Use; and that the applicant shall plant and maintain a solid row of evergreen trees along the north, west and east property lines as indicated on the site plan, as you can see on the far left, towards the rear of the property.

Also, in Item No. 3 of the conditions that the applicant shall not run the vehicle for more than the time that is necessary for normal start-up and maintenance and that trailers that require refrigeration when parked on site shall not be permitted. Other than that, I will answer any questions that you have."

**GAROFALO** "Are there any questions of Lisa? Apparently not. We will hear from the applicant."

**NANCY KNOWLES** "Hi, this is my husband, Russ. We live at 10240 West 93<sup>rd</sup> Street North, Valley Center. We purchased the semi on March 17. He left the hospital to become self-employed as a truck driver. To maintain the semi in the wintertime, we need to plug it in and that is why we would like to have it on our property. We did increase our driveway another 12 additional feet to accommodate the semi or the trailer coming in so it would never, ever touch anybody else's property.

The only other thing I can think of at this time is that we may need a change on the one deal, we had talked about putting some evergreens in on the back rows. We talked to Johnson's Garden Center about getting some trees ordered, and they told us not to plant the evergreens because there is something called a 'pine wilt' disease going around and they are saying that in the next 5 years that all of the evergreen in Kansas will probably be dead. If there is something else we can plant, we will do that. Let us know if you have any specifics. Otherwise, we were going to look at some Austrian Pine type trees, stuff like that, if there is any problem with that. We just hate to plant something if it is going to be dead in a year or two.

There was a comment made about a refrigerator trailer. My husband contracts out to Brisk Transportation. They contract all of Dillon's, so he basically hauls for Dillon's. We have never, ever had a refrigerator trailer on our property. I had talked to Lisa and told her she could even call the Brisk Company or even Dillon's because they have to dispatch in every time the trailers are in and out because they have to know where those things are 24 hours a day, where they are being kept at. We have never had one on our property. We did have a regular Dillon's trailer one time on the property because they had dispatched my husband out many times that day and they knew he had had lack of sleep, so they told him just to bring it back in. There was no foodstuff on it. It wasn't a refrigerated trailer.

Comments were also made that we have left the truck running all night. Anybody knows that at the cost of fuel, you can't afford to leave that thing run all night, plus with him sleeping in the house, it doesn't make any sense. The truck is being left only to run for the time it takes to build up the air pressure or for maintenance on it. That is the only time we let it run."

**RUSSELL KNOWLES** "The trailer that is on the lot right now is a grain trailer. It is not a Dillon's trailer. That is our own trailer, which is a grain trailer, a 40-foot trailer. I do plan on trying to lease out here shortly. We are willing to put it wherever you suggest."

**NANCY KNOWLES** "The only other thing I need to ask you guys is there is no time frame here kind of talked in here. The neighbors that did the complaint, their back fence is 10-12 feet over on our property, so in order for us to put up our fence and to put up our trees, they are supposed to be moving their fence. What kind of time frame do we have, and what do you want us to do about that? We could tear down their fence, but they have goats and horses running everywhere."

We want to comply because this is important. It is our second biggest investment, compared to our house, and it is our income. We will do what we have to do to comply. We don't have a problem with that. We were very surprised that we were complained on when we have watched for over a year, those neighbors pile up huge mounds of manure, let raw sewage run on the ground because she has people living in their barn and we could have complained but we didn't because we want to be neighborly and work together. We are willing to do whatever we can do to make the situation work, but we do need the semi on our property so we can maintain it and also for security reasons."

**GAROFALO** "So your main question is about the time frame and when.."

**RUSSELL KNOWLES** "The time frame to put the fence up and the row of trees."

**NANCY KNOWLES** "And also, the people from the garden places are telling us not to plant trees right now. They say it is the wrong time of the year. Would you allow us to the fall to plant, and then we could have someone come out and take a look that we are complying with the deal made. We will comply with it."

**KROUT** "That is not a problem. The planing time is not a problem. If the Planning Commission wants to clarify that. That is something that we just do administratively; just wait for the next planting season, but clarifying it is possible. While we are taking additional testimony, let me talk to Lisa about the situation with the encroachment."

**GAROFALO** "Are there any questions of the applicant?"

**BARFIELD** "Are the Robert Buckles and the Mike Flurrys your adjoining neighbors on both sides?"

**NANCY KNOWLES** "Buckles?"

**BARFIELD** "Yes. Robert and Donna Buckles."

**NANCY KNOWLES** "I am not familiar with them."

**BARFIELD** "Then where did that come from?"

**NANCY KNOWLES** "Well, it might be. There are some people who own land out there, but they don't live there. It might be some of them who own the land. I don't know."

**BARFIELD** "How close is the nearest residence to your property?"

**RUSSELL KNOWLES** "There is a single trailer and it is probably about 30 feet west of us."

**HENTZEN** "West of your house?"

**RUSSELL KNOWLES** "West of our boundary."

**HENTZEN** "Down where your house is, or up where the trailer is going to be parked?"

**RUSSELL KNOWLES** (Indicating) "In this area right here."

**HENTZEN** "Okay."

**OSBORNE-HOWES** "You are talking about having one truck total parked?"

**RUSSELL KNOWLES** "Correct. And a trailer. And that truck takes probably about 1 to 2 minutes to build up air pressure to release the brakes to move it. I usually get it out right away."

**LOPEZ** "I have a question for staff. If there is going to not be a concerted effort in a timely manner to deal with the encroachment on that property, if those residents don't deal with that, how is it going to affect their complying with the screening?"

**KROUT** "That is a problem. I think you can address it in the conditions. Lisa will talk to the applicants while you continue the testimony. She is not sure where they are talking about. It may not be a problem."

**GAROFALO** "Okay. Let's see if there is anyone else to speak in favor of this application. Okay. Is there anyone to speak in opposition? If not, we will bring it back to the Commission."

**OSBORNE-HOWES** "So, who are these people? (Holding up protest memo)"

**GAROFALO** "They must be neighbors."

**OSBORNE-HOWES** "They don't know who they are."

**MOTION:** Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The surrounding land is zoned "RR" Rural Residential. There are agricultural and single-family residential uses surrounding the site. The character of the area is predominantly agricultural. Suitability of the subject property for the uses to which it has already been restricted: This site is zoned "RR" Rural Residential and developed with a single-family home. If the applicant were able to meet all the Unified Zoning Code requirements for a rural home occupation, then the applicant would be permitted to park the tractor-trailer on this property "by-right." Extent to which removal of the restrictions will detrimentally affect nearby property: The applicant has agreed to provide adequate screening of the outside storage of the tractor-trailer from surrounding residences and to park the vehicle towards the rear of the lot, off of 93<sup>rd</sup> Street North. These should help to alleviate any detrimental effect to the surrounding property owners. Conformance of the requested change to adopted or recognized Plans/Policies: The Land Use map of the Comprehensive Plan identifies this area as appropriate for agricultural and related uses. This category can allow other uses common in rural areas that are no more offensive than normal agricultural uses. This request does conform to the agricultural intent of the Comprehensive Plan. Impact of the proposed development on community facilities: None.) I move that we recommend to the governing body that the request be approved, subject to all staff comments, and that we allow through the end of the year to comply with the screening requirements.

**WARREN** moved, **WARNER** seconded .the motion.

**MCKAY** "Mr. Warren, what if the neighbors don't get their fence moved by the end of the year?"

**WARREN** "Well, I think you then have a legal problem then. I don't think we want to get into that."

**MCKAY** "Well, you could put into your motion 'to the end of the year or until the neighbors get their fence out of the way so that they can comply'."

**WARREN** "I don't know whether we can legally do that or not."

**JOHNSON** "Well, then vice-versa. Part of the motion was that they had to have the fence up within 6 months, and if the neighbor didn't move their fence so that they could get it done, they couldn't park their truck there."

**GAROFALO** "Wait. I think Lisa has something."

**VAN DE WATER** "I missed the beginning of that conversation, and the actual making of the motion, so I am not quite sure where you are. I just spoke with the applicants and it does appear that the neighbor's fence at the rear of the property is encroaching onto the applicant's property. There has been movement to move that fence, according to the survey that the neighbor recently had done. The applicants aren't confident that that fence will be moved in a timely manner, based on past experience with that neighbor, but it appears that there has been an attempt to move the fence."

**MARNELL** "Is the screening and the fencing that is part of this application, does it provide screening in exactly the same place where the fence is in the wrong place?"

**VAN DE WATER** "It is my understanding that right now, (indicating) this is the applicant's property line, the fence that they have put up is somewhere east of that line, to be moved."

**MARNELL** "What type of fence is that?"

**VAN DE WATER** "Just a barbed wire fence."

**MARNELL** "It would seem like the screening is for the benefit of that party, or that is what it sounds like, so...."

**KROUT** "I think that you could say that the evergreen planting could be planted in the next planting period and when any encroachment has been removed along that property line."



**MCKAY** "Is there a substitute for evergreens?"

**KROUT** "Is Donna still here? I know that Austrian pine has a problem, but I think there are other evergreen plants that are available that shouldn't die in the next 5 years. Otherwise, Wichita is going to be in pretty sad shape."

**WARREN** "There are press cedars."

**KROUT** "Yes, press cedars."

**WARREN** "Are we actually going to require a fence if we get the proper screening?"

**VAN DE WATER** "We're not requiring the fence."

**KROUT** "We are just saying that the fence is in the way."

**HENTZEN** "It just seems impossible of us to make those people plant that many trees just because they want to pull that truck in there. I don't even know why we are requiring them to put any trees there."

**MICHAELIS** "I don't either."

**MCKAY** "Because there is an article in the book that says you have to. I asked Dale and he showed it to me."

**HENTZEN** "Well, then, we don't need to be listening to testimony. Let's just have the staff put the book on the table and we will vote on it. The guy is just trying to make a living out there. He is at 9300 north, and we want to screen it. I don't know whom we are screening it from? The guy that owns the horses or cows and the goats? I just don't think this screening is necessary."

**WARREN** "My neighbor on my farm has three semi trucks, only they are in the name of agriculture, and they sit right there all of the time."

**KROUT** "You could make that a part of the motion if you desire to."

**WARREN** "Do you mean to eliminate the screening?"

**HENTZEN** "Well, yes. Do we have a motion on the floor? I would like to make a substitute motion."

**SUBSTITUTE MOTION:** I move that we recommend to the governing body that the request be approved, subject to the following:

1. The Conditional Use shall only be permitted for a home occupation involving the parking on one tractor-trailer. No other home occupations shall be conducted on-site without amending the Conditional Use Permit.
2. The tractor is to be parked adjacent to and either south or west of the existing 40-foot by 80-foot barn at the rear of the property.
3. The applicant shall not run the vehicle for more time than is necessary for normal start-up and maintenance. Trailers that require refrigeration when parked on this site shall not be permitted.
4. The applicant shall comply with all other conditions for a rural home occupation except for the standards that were specifically waived as part of this Condition Use Permit.
5. Any violation of the previously stated conditions shall render this Conditional Use Permit null and void.

**HENTZEN** moved, **BARFIELD** seconded the motion.

**GAROFALO** "Is there any discussion? Okay, then we will vote on the substitute motion."

**VOTE ON THE SUBSTITUTE MOTION:** The motion carried with 9 votes in favor. There were 3 votes in opposition (Osborne-Howes, Platt, and Lopez). Carraher was not present.

**PLATT** "Let me get into the record for voting no. I think this sets a precedent that we do not require screening for someone parking a semi trailer in a residential area."

**HENTZEN** "I thought this was farm area."

**PLATT** "It is residential."

**LOPEZ** "And also, we have required this screening on other tractor/trailer requests in rural areas in the past. It is a written policy and to change the policy on the request of the applicant, I think it is something that has to be dealt with as to policy, not on each one of these cases."

**HENTZEN** "If we have been out of control on requiring screening, we ought to correct it when we can."

**LOPEZ** "Well, I feel we are out of control."

**OSBORNE-HOWES** "I might also say that this was done after much discussion when we first started having applications for this kind of thing. It came as a result of a number of people living close by who requested it. It took a lot of time and effort and energy to those of us who served with the staff to create this. I think there is a good reason for it."

**HENTZEN** "I think on Conditional Uses each one has to be judged on the merits of that case. I don't think we can be as rigid on a Conditional Use."

**GAROFALO** "Okay. We have had the vote already. Lisa, are you clear on what was done?"

**VAN DE WATER** "I should probably just clarify this. The motion, as I understand it was recommend approval, except we remove the first sentence of Item No. 2, which is all of the screening requirements."

**KROUT** "That is right."

**VAN DE WATER** "Okay."

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**13. CON2000-0008** - Curtis Wayne Pyrant and Douglas L. Watson (Owners/Applicants) request a Conditional Use for a cemetery, on property described as:

Lots 1 and 2, Webb-31 Addition, Sedgwick County, Kansas. Generally located south of 31<sup>st</sup> Street South and west of Webb Road.

**SCOTT KNEBEL**, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

**BACKGROUND:** At the May 25, 2000 MAPC hearing, the MAPC approved this Conditional Use request 10-0. However, the applicant submitted an ownership list containing an incorrect address for one of the properties within the area of notification. Due to this faulty notification, a rehearing of the Conditional Use request is required. Since the last hearing, protest petitions have been received from 12 of the 17 properties in the area of notification.

The applicant is requesting a Conditional Use to develop a cemetery on an approximately 11-acre platted tract located south of 31<sup>st</sup> Street South and west of Webb Road. The subject property is zoned "SF-20" Single Family Residential (approximately 3 acres) and "LC" Limited Commercial (approximately 8 acres). Cemeteries are a permitted use in the "LC" district and are permitted with a Conditional Use in the "SF-20" district. The subject property is primarily undeveloped with a funeral home located immediately at the southwest corner of 31<sup>st</sup> Street South and Webb Road.

The applicant has submitted a site plan that shows the cemetery located south and west of a recently constructed funeral home located at the southwest corner of 31<sup>st</sup> Street South and Webb Road. The cemetery would have access to Webb Road and would have an internal circulation road. Landscaping berms are shown along Webb Road. A future mausoleum is shown in the southwest corner of the subject property.

The surrounding property is primarily developed with a mixture of suburban residential and agricultural uses on property zoned "SF-20" Single Family Residential. The nearest residential properties are single family residences on large lots located east of the subject property across Webb Road. The northwest, northeast, and southeast corners of the 31<sup>st</sup> Street South and Webb Road intersection are undeveloped and are zoned "LC" Limited Commercial. To the west of the subject property is a church on property zoned "SF-20" Single Family Residential.

**CASE HISTORY:** The site is platted as part of the Webb-31 Addition, which was recorded on July 15, 1999.

**ADJACENT ZONING AND LAND USE:**

NORTH: "SF-20" & "LC" Agriculture  
SOUTH: "SF-20" Agriculture, Single Family  
EAST: "SF-20" & "LC" Agriculture, Single Family  
WEST: "SF-20" Agriculture, Church

**PUBLIC SERVICES:** The site has frontage to 31<sup>st</sup> Street South and Webb Road, both two-lane paved section line roads. 31<sup>st</sup> Street South has traffic volumes of approximately 2,000 vehicles per day. The 2030 Transportation Plan estimates the volume for 31<sup>st</sup> Street South will increase to approximately 5,400 vehicles per day. Webb Road has traffic volumes of approximately 3,900 vehicles per day. The 2030 Transportation Plan estimates the volume for Webb Road will increase

to approximately 5,300 vehicles per day. Municipal water and sewer services are not required for the proposed cemetery use.

**CONFORMANCE TO PLANS/POLICIES:** The Land Use Guide in the update to the Comprehensive Plan that was recently adopted by the Planning Commission indicates that the subject property is appropriate for "Low Density Residential" development. With a Conditional Use, cemeteries are permitted in residential districts. The Land Use Guide also indicates that the subject property is on the fringe of the 10-year urban service area.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

1. The site shall be developed in general conformance with the approved site plan. All improvements shall be completed before the facility becomes operational.
2. Any violation of the conditions of approval shall render the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding property is primarily developed with a mixture of suburban residential and agricultural uses on property zoned "SF-20" Single Family Residential. The nearest residential properties are single family residences on large lots located east of the subject property across Webb Road. The northwest, northeast, and southeast corners of the 31<sup>st</sup> Street South and Webb Road intersection are undeveloped and are zoned "LC" Limited Commercial. To the west of the subject property is a church on property zoned "SF-20" Single Family Residential.
2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned "SF-20" Single Family Residential and "LC" Limited Commercial. Cemeteries are a permitted use in the "LC" district and are permitted with a Conditional Use in the "SF-20" district.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The development standards of the Unified Zoning Code should limit any detrimental affects of the proposed use on nearby property.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide in the update to the Comprehensive Plan that was recently adopted by the Planning Commission indicates that the subject property is appropriate for "Low Density Residential" development. With a Conditional Use, cemeteries are permitted in residential districts. The Land Use Guide also indicates that the subject property is on the fringe of the 10-year urban service area.
5. Impact of the proposed development on community facilities: The use of this property should have limited impact on community facilities.

**KNEBEL** "This request was heard by the Planning Commission on May 25, 2000 and was approved by a 10-0 vote; however the applicant submitted an ownership list from the title company that had an incorrect address for one of the property owners in the area of notification, thus the whole process was faulty and needs to be reheard.

The applicant is requesting a Conditional Use request to develop a cemetery on the subject property, which is outlined in black here. The cemetery is a permitted use and the portion of the subject property, which is in red here, is zoned Limited Commercial; however the applicant owns the entire parcel here and the beige area is 'SF-20' Single-family residential, which requires a Conditional Use.

The applicant has submitted a site plan for the entire portion and the legal description on the application was for the entire subject property. So the Conditional Use application deals with all of this property. The site plan shows an existing funeral home at the corner of 31<sup>st</sup> South and Webb with a cemetery located behind it, landscape berms along Webb Road and a possible future mausoleum in the back.

The surrounding area is developed with a mixture of suburban residential and agricultural uses. Beyond the site there is a church and a manufactured home on a large lot to the west. To the north of the subject property is a large agricultural field of approximately 80 acres. There are some suburban residential homes located south and southeast of the site.

The Planning staff has recommended that this be approved, subject to the condition that the site be developed in conformance with the site plan. I am available for questions."

**BARFIELD** "The existing funeral home, is that owned by the applicant?"

**KNEBEL** "That is correct. I should mention that the applicant called me earlier today and indicated that he might not make the meeting and it does appear that he is not here. He did testify previously, but it doesn't appear that you are going to be able to hear from him today."

**OSBORNE-HOWES** "Has anything changed other than just the fact that one of the residents was not notified?"

**KNEBEL** "That is the only thing that has changed. One thing I didn't mention that is in the staff report. We have received a number of protest petitions since the previous approval, from 12 of the 17 properties in the notification area."

**GAROFALO** "So as a result of that, would that mean that this will go to the County?"

**KNEBEL** "It would go to the County, yes."

**GAROFALO** "Because of those protest petitions?"

**KNEBEL** "That is correct."

**GAROFALO** "Are there any other questions of Scott? The applicant isn't here. Is there anyone else that wishes to speak in favor of this application? Is there anyone that wishes to speak in opposition? How many? Looks like five. Okay, first speaker."

**GREG BOURGEOIS** "I live a 9115 East 31<sup>st</sup> Street South, about 1/8 of a mile due west of where they put in the mortuary. I talked to you before. I have a question. I had to go through, looking at the zoning permits and all of that, the zoning rules and requirements. Most of us are on wells out here and that question came up before, and I think it was answered by the staff that there has been found no problems with cemeteries or anything before. Well, in looking at the Environmental Protection Agency (EPA) requirements for protecting local groundwater supplies through wellhead protection, it so lists that cemeteries are a common cause of contaminating that water. I am sure you have probably seen this documentation so there is no need for me to bring it up to you, but you are more than welcome to look at it. It is put out by the EPA. There are two separate regulatory guidance in reference to this where the city planning commissions are supposed to work with the community in ensuring that they don't have to worry about contamination. I don't know who to give this to."

**KROUT** "We will circulate it."

**BOURGEOIS** "If you look at Page 10 in that particular document under commercial, it talks about cemeteries, dry cleaners and so on and so forth. With using water out there for both human and domestic animals, hoofed animal, fowl and food, because we have agriculture growing out there, I still question putting the cemetery in. Who is going to monitor it? Who is going to let us know if any contamination gets into the water well? How quick will we find out? And so on and so forth."

This isn't like a U.S.T., an underground storage tank where you put it in and there are dual qualification, there are lights, there are numbers, people monitoring it. The question came up by the Commission before that the cemeteries in the local town here weren't a problem. But we are rural, okay? We don't run up and plug in to the local water. The city water doesn't run right across our property. A couple of gentlemen came up and said that it was going to be a cost to the family to try to hook up to rural water and if you have animals or fowl or whatever, we've got problems. I want to bring that up.

In talking with the Sedgwick County Health Department, they couldn't give me an exact answer. They said there would have to be a lot of testing, a lot of question on how the processes are set up, so on and so forth. I just question if you are going to throw this in the middle of it, and we live with it. You are the board, I would like to know how we can deal with it, and how we are going to find out if we have contaminated water that I have to put in my family's mouth? That is my primary concern.

This question came up and it was just sort of slid off the last time. If the EPA feels that it is a problem, I am just a little fish in the pond. I am sure it has been a problem before and it could be a problem again. Are there any questions for me?"

**GAROFALO** "Sir, when you talked to the Health Department, did you have this document available?"

**BOURGEOIS** "Yes. I asked them about it and they said that they would have to look into it. That is what they told me. Now, this document says it is supposed to be already set up. I have gone down and looked in the Zoning Code under 'SF-20', and I even had to buy a copy of the Zoning Code so I could sit down and read them."

When I went through them, I didn't see anything in there about water, no abbreviations, and no questions, there are no comments, but you can put a cemetery in an 'SF-20' area. It does state that in about 6 or 7 different sections in there, so cemeteries have priorities over drinking water."

**MCKAY** "Sir, are there any farming operations in this area?"

**BOURGEOIS** "Sir, directly behind me there is all kinds of farming. We have Hong's Nursery over there that is growing things."

**MCKAY** "Is there any cattle?"

**BOURGEOIS** "The young lady in the corner over there has a horse."

**MCKAY** "Are there any cattle?"

**BOURGEOIS** "Yes, sir, the people two doors over from me have cattle."

**MCKAY** "On this document you just gave us, it says 'animal burial, animal feed lots, fertilizer, airports'. It has everything under the sun. It has septic tanks, do you have a septic tank?"

**BOURGEOIS** "We do have an above ground, and you already see on there that that is a contaminating factor."

**MCKAY** "It even says swimming pools."

**BOURGEOIS** "Uh, huh."

**MCKAY** "Thank you."

**GAROFALO** "Are there any questions of the speaker? Okay, thank you, sir. Next speaker please?"

**KIM SACKETT** "I currently live at 9815 East 31<sup>st</sup> Street South. When my husband and I acquired our property and built our home there, we did so for several reasons. We wanted to live in the country, away from the normal development patterns that you would see in the city. We also liked the development that had already occurred in the area, and we were impressed with the very limited amount of property that was already zoned Light Commercial in the area.

We did realize that segments of the land located along 31<sup>st</sup> Street South from Webb Road to Rock Road were zoned Light Commercial, but we felt that we had a sufficient distance from these properties to protect the value of our home. If this zoning change does take place, we would be able to see the cemetery from our home. It would be within viewing distance of our home, not to mention directly across the street from some of our neighbors.

At first knowledge of this proposed change, my gut belief was that this type of change would be detrimental to the value of our home and that it would also make it a lot harder to sell. After thinking for a time about my position, I thought maybe I needed to validate my perception; that I was being biased. So what I did was to go out and take a little informal survey. I called some real estate agents. I talked to a title insurance company and I talked to friends and co-workers. Of all of those people, I did not have one single individual that did not agree that it would probably effect the value of our property; that it might make it harder to sell. Some of these individuals even chuckled and said 'I know that I wouldn't want to buy property beside a cemetery'. This would especially be an issue because some of us do use this well water for drinking water in the area, as my neighbor just mentioned.

My other concern as a homeowner is that a precedent might be set with the decision to change this zoning. If there were additional lots in this area that have the zoning change implemented on them, it would make even more major impacts to the value of our homes. Many of us out there have \$100,000 plus homes.

This is also especially significant because the overwhelming majority of the landowners in this area have invested money in their property and they do use it for single-family or rural residential or agricultural use as it is currently zoned for. Because of all of this, I am respectfully requesting that all of you weigh the effects on property values in the areas if you were to implement this zoning change. That you would also consider the impacts of decreased property tax revenues that should result from decreased property values if this were to be implemented, and also the potential of increased traffic in an already busy intersection at 31<sup>st</sup> Street South and Webb Road, which is only controlled by stop signs. We have a lot of traffic there from Boeing and from Raytheon, and if we have additional funeral processions coming in there for burials, I think it would cause more impacts. We have seen a lot of individuals life watched off that intersection, and also at the intersection of Webb Road and 47<sup>th</sup> Street. Please disapprove this request for zoning change."

**GAROFALO** "Are there any questions of the speaker? Thank you. Next speaker."

**LINDA PATRICK** "I live at 3333 South Webb Road. I am the property that is directly south adjoining this disputed parcel of land. My biggest question is 'who in the world let them put in a septic tank'? I have lived on this property for 16 years and I am the longest resident in this area. I have watched that ground do things that tears up anything. No matter what you do, it will tear it up. I guarantee within 3-5 years at the most, that septic tank is going to be leaking. It is going to be in their water and my water. I don't think it is fair that you are bound and determined to ruin our water for the sake of somebody that has a lot of money.

I have done things to my property...I have had to cable my stupid gates to keep them from pulling apart. That ground pulls everything every which way, depending upon whether we have had a rainy season or dry season. Now, when I moved out there, I thought I would be very smart and put in an in-ground well house so that I wouldn't have to heat it. Well, I have news for you. When it rains, that well house is full of water. I guarantee that that septic tank will leak. Thank you."

**GAROFALO** "Are there any questions of the speaker?"

**KROUT** "Ma'am, were you referring to the septic tank that was constructed with the funeral home? Do you have any problems with the cemetery? The funeral home is already approved. Now, there may be some issues with that."

**PATRICK** "I think there are some minor problems besides the pollution that is going to happen from the septic tank. I wouldn't be happy with a cemetery next door, but I wouldn't be totally unhappy. At least they are going to be quiet. But

that septic tank is going to leak, I guarantee it. And they are going to be putting formaldehyde and everything else in our water."

**GAROFALO** "Thank you. Okay, next speaker."

**ELDON GOLDENSTEIN** "I own the property at 3230 South Webb Road, which is directly to the east of the proposed site for the cemetery. Just briefly, at the beginning, I was really not opposed to the fact that there might be a cemetery across the road after they built the mortuary, but during the construction of the mortuary, I spent a lot of time watching the progress, and I don't feel that the applicant has complied with all of the necessary things that were required of him to put the mortuary in business. The berms along Webb Road aren't constructed yet. The landscaping hasn't been done. He has been open for business for about 30 days, and I feel that this should be taken into consideration that if this zoning is changed that before he is allowed to put a cemetery in over there, he needs to complete what he has already started. I don't think that has happened, so I am not sure that the applicant has complied with all of the necessary things that he has already said that he is going to do.

Therefore, I am in protest of the cemetery because I don't feel that over the next few years that all of the compliances will be met. Therefore I am in protest of the cemetery."

**GAROFALO** "Are there any questions of the speaker? Thank you. Next speaker."

**JAMES HARDEN** "Good afternoon. I was up against this Committee last time. I live at 3300 South Webb Road in Wichita. You asked the question whether Linda Patrick was opposed to the cemetery. She did sign the protest petition against it. It is logged in with the County, if you want the answer to that.

I think I said just about all I could say last time, and obviously it didn't get anybody's approval. It seems like every one of you voted for this. I kind of felt like you guys probably didn't have a real good heart as far as what the residents of that area are looking for. I also don't feel that you are looking at a long-term effect of what it may do to the other businesses that may come in to area.

You are looking at a church that is within 1,000 feet. So you are not going to have any taverns and you are probably not going to have any convenient stores that sell beer. So you are going to be limited to the type of commercial properties that are going to build in there, restaurants, for an example. It is not very often, I don't think, that people would want to look out a restaurant window and see a cemetery. There are a lot of aesthetic values, not only to the residents of that area, but it is also aesthetic to those folks that would be there in other businesses. I realize that the area surrounding that is already commercial; you have already basically kind of done the damage as far as allowing what is already there, as we talked about earlier about the groundwater effects. Not only that, but what Linda was talking about, the septic values there.

It cost me \$680 to have a perc test done. I already knew that I was going to have to have a lagoon because everyone in that area has a lagoon. But the County made me go get a perc test and that cost \$680 to have that done, and sure enough, I had to have a lagoon. So it kind of amazes me, I feel for what Linda is trying to say about a septic system within that area. It does have some problems. Mr. Goldstein there on the corner had a septic system. He has now had to cross over to a lagoon. I just haven't understood why we got a 10-0 vote. Nobody wanted to vote against putting a cemetery at this location. We are talking, probably, at the max, out of the 10 acres that you are probably going to get approximately 8 acres on the cemetery. I just don't understand why you guys continually want to vote that way. If this was voted down, I don't feel that the mortuary would obtain probably the property as a cemetery, because there wouldn't be but approximately 5 acres or so left that would be of any value to a cemetery. That is about all I can say. This area being primarily an agricultural area, and we built homes out there in that area, all sitting on 5 to 10 acres, some of them have more. It is not like being within the city where you have a lot that is 50 x 100 feet or whatever. I think you need to look at it in a little bit different light. All of the properties around the area have protested this thing and I don't think you guys are giving enough heart to this to put it to bed yet. Are there any questions?"

**GAROFALO** "Are there any questions? Thank you, sir. Next speaker."

**CINDY BOURGEOIS** "My husband spoke a little while ago about the groundwater. Is the person that answered our E-mails here?"

**KNEBEL** "That's me."

**BOURGEOIS** "The E-mail that I received stating that this meeting was coming about gave me the total impression that my coming here was a total waste of time. That you people would not take the time to hear anything that any of us had to say because basically you had made up your minds. The person that built that mortuary on that corner had so much money invested in it that the cemetery was an absolute necessity to make it right.

Well, that is our home. The mortuary was built there, and there are chemicals being put into a septic tank that is someday going to come apart. I don't know where he is putting that formaldehyde, do you? I don't know where all of this stuff is going. I don't know if he is disposing of it. Cemeteries are put in with very little approval; mortuaries are put in with no approval. If it is approved for commercial use, it goes in. The people around it don't have any say, so basically, we are stuck. We have no choice as far as that mortuary is concerned. I don't like the lighting outside because I moved to an

area that was rural and now the lighting is so bright, even as far away as our home is, an eighth of a mile away, it lights up our house. The idea was to stay rural.

Now, my gripe about the cemetery is basically the same as everybody else's, but I would like for you all to stop and think about something. When I got that E-mail that said 'hey, you may as well not even show up', was the basic tone of the entire thing, and how would you feel if they were building a cemetery next to your house? Is that something you would want next to your home?

The cemeteries that have homes around them now were built years and years ago. People bought their homes there because they chose to, not because they were forced to have a cemetery next to them. That is something that I think you people should consider also. Thank you."

**JOHNSON** "Ma'am, did you say that the mortuary was built with no approval? What is that based on?"

**BOURGEOIS** "My understanding is that all you need is the proper zoning, which he had, the Light Commercial zoning and a business permit and the building--people to come in and approve the building. That was what I was told."

**JOHNSON** "I am not an authority on it, but I just had the opportunity of building one of them for an owner and I couldn't believe all of the requirements the state put on them before they could ever open the door. There is lots and lots of red tape for one of them. Lots of approval before they can officially do business in a mortuary."

**BOURGEOIS** "One of my biggest questions, when the mortuary was originally coming in was why weren't we notified that they were putting a mortuary in the same way that we are being notified that they are putting a cemetery in. We never had a chance to say we didn't want it there."

**JOHNSON** "I guess that is the other thing I wanted to tell you. We didn't have anything to do with the mortuary today."

**BOURGEOIS** "Yeah, I understand that, but what I am saying, we had a choice with the cemetery. We had a choice to come here and make our arguments about the cemetery."

**JOHNSON** "It was just that the property had already been zoned for that."

**MILLER** "I think the nature of Scott's E-mail that he was trying to point out that in the number of people who were calling were also complaining about the mortuary. The mortuary was approved a long time ago with the zoning. They didn't know what use was going to go in there, but that 'LC' zoning has been in place for years. A mortuary is an approved use there. That is why you didn't get any notice on that. We don't do that."

**BOURGEOIS** "Right. Well, like I said earlier, we are stuck as far as the mortuary is concerned, but the tone of the E-mail I got was not necessarily saying 'no, don't come', it was basically saying 'you are wasting your time coming because we are going to approve this no matter what you have to say.'"

**MILLER** "I would like to see that to see if that is really what it said. I think the nature of that E-mail was that if your main complaint is with the mortuary, there is nothing this board can do about the mortuary."

**BOURGEOIS** "No. We're complaining about the cemetery. We don't want that cemetery in there, and we, I feel, have a very valid right. Like I said, would you want that next to your house?"

**GAROFALO** "Scott, do you want to respond?"

**KNEBEL** "I think that she is rightfully emotional about this and I think that there is an emotional impact on it. I don't think that the intent of my E-mail was to indicate that this Commission was not going to hear this case. In fact, I know that was not my intent. What my statements were regarding was exactly what Dale said, regarding the mortuary which they were asking many questions about. I pointed out that the application was for a cemetery and that we could not consider the impact of the mortuary when considering whether or not to approve the cemetery."

Also, they were asking several questions about the financial capabilities of the owner, and I made indications that in the past, the Planning Commission has tended to take the position that the free market should decide and we should not be determining whether or not an application should be approved because the owner can't afford to operate the business that they are asking to operate."

**MARNELL** "Scott, on the plan that is showing up there, there is a sketched-in road that shows circulation through that cemetery, and we have common ownership between the proposed cemetery property and the mortuary property. It looks to me like on that north property line, just across it is a parking lot. It is my assumption that the cemetery being tied with this mortuary is that there will be funerals held there and burials in the cemetery. Is that somewhat the plan? Is this cemetery going to service this mortuary to some extent, at least?"

**KNEBEL** "I assume so. I wish the applicant were here."

**MARNELL** "Wouldn't that be logical?"

**KNEBEL** "Yes, that seems logical."

**MARNELL** "Then the question I would have is why would you circulate traffic out of the mortuary in a slow traffic funeral procession out onto, I would assume Webb Road, I don't see where they exit, and then go such a short distance and back into an entry. It would seem that if they are going to do that, we ought to put that road connecting into that parking lot and they could go straight in there and at least alleviate some of the traffic problems."

**KNEBEL** "That seems like a reasonable requirement."

**GAROFALO** "Are there any other questions of Scott or the speaker? Thank you, ma'am. Is there anyone else to speak who hasn't spoken? No one else to speak? Okay, thank you. The applicant isn't here, so he doesn't get any rebuttal. I will bring it back to the Commission."

**MCKAY** "I would like to ask that gentleman sitting in the back a question. Will you come back up? The question was brought up by Mr. Marnell why they would go out onto Webb Road and back in and you said you had the answer to that. Why?"

**GOLDSTEIN** "I don't know that I have the answer, sir, but it is my belief that the man intends to use the cemetery for his own personal use, but that it will also be used by other people. The lots will be for sale to the public. And to keep from having other mortuaries bring their funeral procession through his mortuary, they are putting in a separate drive for that. That is my belief."

**MCKAY** "Okay, thank you."

**GAROFALO** "I just want to make a general comment. I don't think you are correct when you state that you shouldn't come here and discuss your position. That the Commission has already made up its mind. I don't think that is valid."

**BARFIELD** "I have a question for Marvin. Is it customary for the public to pay for zoning documents?"

**KROUT** "You mean if they want a copy of a file, for instance? All of the information in a file?"

**BARFIELD** "Well, one gentleman said that he had to personally pay for some documents that he got."

**KROUT** "We do charge Xerox fees."

**BARFIELD** "Is that what you paid, sir?"

**KNEBEL** "He bought a copy of the Zoning Code."

**KROUT** "Oh, if it was the Zoning Code, anyone is welcome to come up and inspect the Zoning Code in our office. If they want to take it home, they have to pay for a copy. We don't yet have the Zoning Code on the Internet, but we hope to soon."

**MCKAY** "Marvin, on this sketch, I am going back to Ron's question about the access from the funeral home directly into the cemetery, is this drawing with the line drawn around it what he is going to do, or is he going to have to present a plot plan with a road scheme or something to that effect?"

**KROUT** "We have not usually required a detailed scheme of individual plots and internal roads. I think it is a good suggestion to make sure and probably it is intended, but he didn't show it, to show some internal roads so that you can move a coffin from the funeral home into the cemetery. I would expect that if there is a funeral and a burial on the same site that probably people would probably just park in the funeral home and walk to the cemetery plot. But I think it makes sense to show some road connection as part of the plan."

**MCKAY** "I think when we approved the one at Greenwich Road and 21<sup>st</sup> Street, I think they had a more specific plot plan. That would be the only question that I have here is give us some interior design rather than just taking a pencil and say we are going to do it this way."

**WARREN** "I hate to kind of sit here and listen to the fact that we are totally insensitive, and that we have obviously already made up our minds and I think it is a misunderstanding that people have in this room that we have absolute police powers to decide what goes where. That is simply not true. The landowners of this land have certain rights that we have to respect the same as we have to respect their rights. I don't think there is any doubt that this fellow can put in the cemetery on the red area. All we are doing is expanding that cemetery 20 or 30%."

I am not insensitive to what they are saying, but I say that there is a legal requirement that we have that balances us and doesn't allow us just to listen to complaints and then react to them."

**GAROFALO** "Scott or Marvin, just to refresh my memory and as I read this, we are talking about a Conditional Use permit basically for 3 acres?"

**KNEBEL** "Essentially, yes. I just scaled it off roughly, but it is the area in beige there."



**GAROFALO** "So the owner with the 'LC' zoning on the remainder, could put in the cemetery on those 8 acres?"

**KNEBEL** "That is correct, or any other use permitted in that district."

**GAROFALO** "Okay, yeah. Any other questions or comments? A motion? Whatever?"

**OSBORNE-HOWES** "When I looked at the information about water contamination, it looked like about everything could contaminate, but I assume, based on the comments, that the contamination would come, if it did, from the mortuary as opposed to the cemetery. Is that correct?"

**KROUT** "I think they are mostly concerned about the cemetery issue. The cemetery is on the list. Scott did contact the Health Department before the last hearing and they indicated that they didn't see a need for any special conditions and they had no knowledge of any contamination as a result of cemeteries.

As this goes forward, we can certainly see if someone else at the Health Department has new information. I don't know, but we can ask them to look at that issue again and be present at the County Commission meeting."

**PLATT** "I would mention that also on that list are homeowners' lawns."

**GAROFALO** "I think everything is on that list. Does anybody want to make a motion or anything? I will just say this that personally, the thing that swayed me the last time was what I just asked again about the 3 acres and the 8 acres and the fact that he could put in a cemetery on the 8 acres, even if we didn't give the Conditional Use permit, if he so wished. I had great reservations about voting for it the last time because there was area opposition and I look at the area more as a residential/agricultural, and then we are sticking a cemetery right in the middle of it. I had great reservations, and I still have great reservations about that, so I may be inclined to not support the cemetery from the standpoint of whether he wants to put in the 8-acre cemetery, then he puts it in. That is out of our control at this point. I thought I would go ahead and mention that before there is even a motion."

**JOHNSON** "I think I am the same way as far as the 8 acres. They could be there and this case wouldn't even be heard in front of us today. I also know that it is apparent that this case is going to end up in front of the County Commission since there is a Protest Petition filed, and they are going to make the final decision. I haven't heard any additional information today that has changed my opinion, so I am going to make a motion to approve."

**MOTION:** Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (1. The zoning, uses and character of the neighborhood: The surrounding property is primarily developed with a mixture of suburban residential and agricultural uses on property zoned "SF-20" Single Family Residential. The nearest residential properties are single family residences on large lots located east of the subject property across Webb Road. The northwest, northeast, and southeast corners of the 31<sup>st</sup> Street South and Webb Road intersection are undeveloped and are zoned "LC" Limited Commercial. To the west of the subject property is a church on property zoned "SF-20" Single Family Residential. The suitability of the subject property for the uses to which it has been restricted: The property is zoned "SF-20" Single Family Residential and "LC" Limited Commercial. Cemeteries are a permitted use in the "LC" district and are permitted with a Conditional Use in the "SF-20" district. Extent to which removal of the restrictions will detrimentally affect nearby property: The development standards of the Unified Zoning Code should limit any detrimental affects of the proposed use on nearby property. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide in the update to the Comprehensive Plan that was recently adopted by the Planning Commission indicates that the subject property is appropriate for "Low Density Residential" development. With a Conditional Use, cemeteries are permitted in residential districts. The Land Use Guide also indicates that the subject property is on the fringe of the 10-year urban service area. Impact of the proposed development on community facilities: The use of this property should have limited impact on community facilities.) I move that we recommend to the governing body that the request be approved, subject to the following:

1. The site shall be developed in general conformance with the approved site plan. All improvements shall be completed before the facility becomes operational.
2. Any violation of the conditions of approval shall render the Conditional Use null and void.

**JOHNSON** moved, **WARNER** seconded the motion.

**GAROFALO** "Is there any discussion?"

**VOTE ON THE MOTION:** The motion carried with 11 votes in favor and 1 in opposition (Garofalo).

**BARFIELD** "Mr. Chair, I would like to make a comment if I could. Before you all leave, I would just like to say that the E-mail you received was a member of the staff, which is the Metropolitan Area Planning Department and they in no way speak for the Metropolitan Area Planning Commission. While being here today, you have seen some of us vote against staff recommendations. We do make up our own minds. I don't want you to go out of here thinking that because this was a unanimous vote that we don't care about what you have to say."

**PATRICK** (From the audience) "How in the world did they ever allow a septic to go in there?"

**BARFIELD** "I can't answer that."

**GAROFALO** "We can't answer that because it was the Health Department."

**KROUT** "Because this case is going to go to the County Commission because of protests that have been filed, we are going to ask the Health Department about how a septic tank was approved. I think there was a recent plat of this property and they had to do perc tests and demonstrate that it worked, so they should have a record of those tests."

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14. **ZON2000-00015** - Allen S. Girrens (owner); Austin-Miller, P.A. c/o Kim Edgington (agent) request zone change to "LI" Limited Industrial on property described as:

The East 600 feet of: Beginning 1376.85 feet South of the Northeast corner of the Northeast Quarter of Section 1, Township 28, Range 2 West; thence South 702.22 feet; thence West 1241.03 feet; thence North 702.22 feet; thence East 1241.03 feet to the beginning, except the East 40 feet for road. AND

The East 600 feet of:

Beginning 2079.07 feet South of the Northeast corner of the Northeast Quarter of Section 1, Township 28, Range 2 West; thence South to a point 128.77 feet South of the Northeast corner of the Southeast Quarter; thence West 1240.04 feet; thence North 639.68 feet to a point West of the beginning; thence East 1241.03 feet to the beginning, except the East 40 feet for road. Generally located one-fourth mile south of Pawnee on the west side of 119<sup>th</sup> Street West.

**DONNA GOLTRY**, Planning staff, pointed out land use and zoning; and showed slides of the general area. She reviewed the following staff report:

**BACKGROUND:** The applicant is requesting a zone change from "SF-20" Single Family to "LI" Limited Industrial for an 18-acre tract located on the west side of 119<sup>th</sup> Street West approximately one-fourth mile south of Pawnee. Although the property is zoned for large-lot residential use, it is being used currently as a construction sales and service establishment for the applicant's landscape business. This business has evolved as the applicant has reoriented his activities from traditional agricultural use of the property to focusing on his landscape contractor's business.

Construction sales and service is first permitted in the "GC" General Commercial zoning district unless the business is primarily a retail business and not a wholesale or service business. In that situation, it is a permitted use in the "LC" Limited Commercial zone. The type of business in operation would not qualify it as being primarily a retail business. The applicant is requesting the "LI" zoning district.

The application area is located in an agricultural area that has "SF-20" Single-Family zoning surrounding it on all sides. The nearest development is Granview Subdivision under development one mile north, and DP-142 Pawnee Mesa Residential C.U.P. (Hunter's Ridge) that is located one-half mile to the northeast. Both of these areas are within the corporate limits for Wichita. The only non-residential use near the property is the future site for a church on the northeast corner of 119<sup>th</sup> and Pawnee, zoned "SF-20." The Calfskin Creek borders the property to the west. The area requested for "LI" zoning is outside the FEMA 100-year floodplain for the Calfskin. The applicant owns additional land to the west that lies within the floodplain.

**ADJACENT ZONING AND LAND USE:**

|        |                        |                             |
|--------|------------------------|-----------------------------|
| NORTH: | "SF-20" Single-Family  | Agriculture, farm           |
| EAST : | "SF-20" Single Family  | Agriculture                 |
| SOUTH: | "SF-20" Single Family; | Agriculture                 |
| WEST:  | "SF-20" Single Family  | Agriculture, Calfskin Creek |

**PUBLIC SERVICES:** Access to the property is via 119<sup>th</sup> Street West, a two-lane arterial paved to county standard. Traffic volumes in 1997 were low, rated as 2,360 ADTs for the segment of 119<sup>th</sup> south of Pawnee. Volumes are predicted to increase to approximately 9,000 by 2030. The 2030 Transportation Plan shows 119<sup>th</sup> being widened north of Pawnee to Maple from two lanes to four lanes; this improvement is not included in the C.I.P. for 2000-2009. South of Pawnee, it remains a two-lane facility.

City water and sewer services are not available west of 119<sup>th</sup> at the current time. The nearest water line is 16" line that is 1/4 mile east of Pawnee and 119<sup>th</sup> W. The nearest sewer mains that could possibly be extended are a 12" main that is 1 1/2 miles east of Pawnee and 119<sup>th</sup> W, or a 12" main that is 1/2 mile north and 1/3 mile east of Pawnee and 119<sup>th</sup> W.

**CONFORMANCE TO PLANS/POLICIES:** The "Wichita Land Use Guide" in the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for low-density residential use, and places it beyond the 10 Year Urban Service Area, but within the 30 Year Urban Service Area. The area to the north, east, and west of the application area is shown for low-density residential also. The area to the south is identified as remaining in rural use. No land is shown along 119<sup>th</sup> as industrial except over a mile to the north between Kellogg and the abandoned right-of-way of the Kansas Central Railroad, and over 1 1/2 mile to the south between MacArthur and K-42.

The "Industrial Locational Guidelines" contain three points. These are:

- Industrial areas should be located in close proximity to support services and be provided good access to major arterials, city truck routes, belt highways, utility trunk lines, rail spurs, airports and as extensions of existing industrial uses.
- Industrial traffic should not feed directly into local streets in residential areas.
- Industrial uses should be generally located away from existing or planned residential areas, and sited so as not to generate industrial traffic through less intensive land use areas.

While the site is along a future major arterial, it conflicts with the first guideline of being an extension of existing industrial areas. The requested rezoning fails to conform to the third guideline since it is located in an area being developed as a low-density residential area.

The first available zoning district that would allow construction sales and service is "GC." There are six locational guidelines for commercial use. These will be discussed to determine the conformance of the application area to potential "GC" use.

- Of the six locational guidelines for commercial use, the proposed request conforms to the required location along a major arterial street, and presumably ingress and egress could be structured during the platting process to avoid traffic congestion.
- It conflicts with the guideline that commercial uses should be located in compact clusters or nodes versus extended strip developments.
- It is inconsistent with the guideline that commercial uses should be located in planned centers or nodes, should be guided to other appropriate areas such as the CBD fringe, segments of Kellogg, or established areas of similar development, and areas where traffic patterns, surrounding land uses and utilities can support such development.
- It adheres to the guideline of not directing commercial use onto local residential streets.
- No site plan was provided to evaluate whether the site design guideline could be met for mitigating noise, lighting and other aspects of commercial activity that may adversely impact surrounding residential land uses. Currently, the property appears to be developed in a neat manner. Presumably, site design standards could be required to ensure compliance with this criterion.

**RECOMMENDATION:** The introduction of industrial zoning at a mid-point location along 119<sup>th</sup> between Pawnee and 31<sup>st</sup> Street South introduces industrial use adjacent to an arterial being developed for residential use and being shown on the Comprehensive Plan for low-density residential use. The lack of public water and sewer service to the site is another factor discouraging this application. There is no significant factor pointing to "LI" being an appropriate use except that the current use has evolved to need "LI" or "GC" zoning in order to expand its landscape construction business. The Comprehensive Plan has identified the Kellogg corridor as an appropriate location for this type of use.

Even when considering the more restrictive classification of "GC," there are more factors weighing against this rezoning than recommending in its favor, particularly because it is introducing commercial use into a mid-point location where previously the land has been used for agriculture. The transition to urban development has followed the pattern of low-density residential. In addition, construction sales and service is considered a use that does not blend well with residential use. Typical operations have a lot of heavy equipment (noise), rely on outdoor storage of equipment and supplies, and require a large amount of land, making adequate screening and buffering expensive.

Based on these factors and information available prior to the public hearing, Staff recommends the application by **DENIED**. This recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood:** The land in the immediate vicinity of the property is used for agricultural purposes. The character of urban development on the eastern side of 119<sup>th</sup> to the north of the application area is low-density residential. The only non-residential use being developed nearby is a church, which is a permitted use in all residential zoning districts. The property to the west is located in the Calfskin

Creek floodplain. The land to the west of the Calfskin along 135<sup>th</sup> Street West, the next major county line road, 135<sup>th</sup> Street West, is in agricultural use with a few large-lot residential uses.

2. The suitability of the subject property for the uses to which it has been restricted: The property could be used agriculturally or in low-density residential use. This would conform to the existing development pattern and the Comprehensive Plan.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The change to "LI" Limited Industrial or "GC" General Commercial would introduce non-residential uses that are incompatible with low-density use. It would provide an opening to encourage other non-residential uses to gravitate to the vicinity.
4. The length of time the subject property has remained vacant as zoned: The property has been in agricultural use and is converting to a landscape construction business.
5. The relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Approving "LI" or "GC" zoning benefits the applicant by not requiring him to relocate his growing business into an area already zoned or more appropriate for this type of use, at the expense of the general public.
6. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The proposed request is not in conformance with the Wichita Land Use Guide of the Comprehensive Plan. The request fails to comply with all locational guidelines for industrial use except not directly using local residential streets for access. The request also fails to comply with the commercial locational guidelines of not locating within commercial clusters or nodes or gravitating to the established areas of similar use or where traffic patterns, surrounding land uses and utilities can support such development.
7. Impact of the proposed development on community facilities: Traffic impact should be minimal. Sewage impacts would be minimal if adhering to a criterion of domestic water level generation and proper drainage/floodplain management. However, greater consumption of water would require extension of sewer lines to serve the site.

**GOLTRY** "As I am sure you are aware from the packets we have sent you, we have suggested that they pursue a rural home occupation route, which would protect the surrounding area from commercial development at the mid-mile section. It is my understanding from today's discussion; I did have a call today from the applicant, that they are requesting deferral of this case. I also would advise you that there are people here in opposition to the case. Dale presented this case a month ago, so I won't go through it in detail. I will wait for your questions or hear from the agent."

**GAROFALO** "Are there any questions of Donna? Is the applicant here?"

**GOLTRY** "Yes."

**GAROFALO** "Oh, yes. Kim is here."

**KIM EDGINGTON** "I am with Austin Miller, representing the applicant. We have been in ongoing discussion with both staff and the County Code Enforcement, with Glen Wiltse and with the Counsel for the neighborhood who is in opposition to this. At this point, we have requested that Glen Wiltse provide us with legal interpretation of what staff has proposed for the rural home occupation. We has requested that he work with County Legal Counsel on whether or not we can proceed or if we should proceed with the rural home occupation; to give his interpretation of this use.

That is why we are requesting this deferral. The County Attorney has not made that decision and we have not received his interpretation regarding this case."

**LOPEZ** "What length of deferral?"

**EDGINGTON** "It will be up to the County Counselor, and at this point we would expect that that would be received in a matter of a couple of weeks."

**WARREN** "We could defer until the County Counselor has written an opinion."

**HENTZEN** "Mr. Chair, it was advertised to be heard today and there are people here to speak to it. Can we not hear them?"

**GAROFALO** "We will certainly hear them, yes."

**HENTZEN** "I just don't like the idea of telling them it is going to be heard and then they sit here all afternoon and we don't because the County Counselor and a few others can't get it together. I think we ought to hear what they have to say."

**GAROFALO** "No, we can hear them."

**MCKAY** "Were they heard the last time?"

**MILLER** "Yes."

**MCKAY** "Did we have a full hearing last time, I can't remember?"

**EDGINGTON** "Yes."

**GAROFALO** "Yes, we did have a full hearing."

**MCKAY** "So I don't know that we are encroaching on anyone's rights if we have already heard them."

**GAROFALO** "But I think if people have already returned to speak..."

**WARREN** "Let's ask if the people who are here have been heard."

**GAROFALO** "Is there anyone here that wants to speak on this item, No. 14?"

**Man from the audience** "Not other than what we talked about at the last meeting."

**EDGINGTON** "Could I address the Commission?"

**GAROFALO** "Sure."

**EDGINGTON** "In speaking with staff, there is also the issue that if we were to request the Conditional Use, we would basically be starting this process over again and republishing. So either way, I believe this is going to have to come back. The neighbors will be re-notified, even if it were to go to the Conditional Use, which is what staff has recommended."

**MICHAELIS** "I have a question of Kim. Are you leaning toward the home occupation Conditional Use in lieu of the zoning change, is that what I am hearing?"

**EDGINGTON** "We are willing to look at that, but there is a definite legal question."

**MICHAELIS** "Which is being worked out in reference to that?"

**EDGINGTON** "Right."

**MICHAELIS** "Okay, thank you."

**OSBORNE-HOWES** "I was a little late coming in to the meeting. Was this announced at the beginning of the meeting that this was going to be a request for deferral?"

**GAROFALO** "No."

**OSBORNE-HOWES** "Then I really think if these people want to say anything that we ought to listen them."

**MCKAY** "But if it is going to be deferred for two weeks, we will have heard them three times."

**OSBORNE-HOWES** "I am just saying that we should have announced that at the beginning, not at 5:30."

**EDGINGTON** "This case was scheduled to be heard no earlier than 4:30."

Barfield left the meeting at 5:25 p.m.

**HENTZEN** "I read their testimony, these folks, and now I think that the applicant, with the help of the staff and the counselors, are going to come in with a different request. That is instead of changing zoning, they are going to ask for a Conditional Use permit."

**EDGINGTON** "That is what we are working on, right."

**HENTZEN** "All I am saying is that according to the testimony, these people have said they are opposed to a zone change. I think we need to ask them if they are opposed to the Conditional Use permit. Do you understand what I am saying?"

**MCKAY** "Just let them speak."

**GAROFALO** "Let me just ask them if there is anything new that they would like to add to what you said previously?"

**Man from audience** "We want it to stay in single-family zoning is all."

**HENTZEN** "That is the point I want to make. I wanted to say that if we don't change the zoning, they don't have a lot of opposition."

**GAROFALO** "Do you want to ask them that specifically? We will get them up to the podium. Sir, will you take the podium, please, and let Commissioner Hentzen ask you a question?"

**LOUIS SITTLER** "I am representing my wife, Lorraine Sittler. I live 24912 West 6th Street South in Garden Plain. What do you want to know?"

**HENTZEN** "These people applied for a zone change from 'SF-20' single-family to some commercial use. We have not voted on that yet. Now, they are asking us to defer it again with a possible new proposal that we not change the zoning but that we give the applicant a Conditional Use permit to use that property in question for a home occupation concerning landscaping equipment. So, I took your testimony to believe that you just didn't want that zoning changed, but to leave it to single-family zoning."

**SITTLER** "That is correct."

**HENTZEN** "The Conditional Use permit would not change the zoning. Do you have a problem with that?"

**SITTLER** "No, not if it is properly regulated properly and with a Protective Overlay. I wouldn't have any objections to it if it were that way."

**HENTZEN** "We have a system for that, and I can tell you why it came about. A number of years ago, when many of the farmers couldn't make a living or couldn't quite make a living out in the country just farming, they got jobs in town at different plants and worked there and then some of them became good at building trailers and welding things and doing other things that they knew how to do to make a living because farming wasn't that good.

So, we did come along and say 'now wait a minute, you are using your property for a business and we tried to cover that with the home occupation procedure. That is working pretty well. What I am saying to you today is they very well might be able to take care of this applicant without changing the zoning."

**GAROFALO** "Thank you sir. Okay, we will bring this back to the Commission."

**MOTION:** That the item be deferred until such time that there is a determination by the County Counselor on the home occupation permit.

**WARREN** moved, **WARNER** seconded the motion, and it carried with 10 votes in favor. There was no opposition.

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**15. Approve MAPC calendar from July 2000 to December 2000**

**GAROFALO** "Does anybody have any problems with approving the second half of the schedule for this year?"

**MCKAY** "Marvin, before we had the CPO run-in, I think it was 4 years ago, and we changed our schedule around. If we would go back to the old system where we met every other week, that is two or three more meetings, but they wouldn't last as long, don't you think? Wouldn't it shorten our meetings, because it would change the time schedule for the people to get their stuff in and all of that and give them two or three more opportunities?"

**KROUT** "It would probably shorten them some. If you had extra meetings, it would shorten your meetings, yes."

**MARNELL** "I can answer that one for me. I don't want any more meetings."

**MCKAY** "I was just talking about the length of these because this could have been to 7:00 or 8:00. It may, anyway."

**WARREN** "I would like to follow up a little bit on what Susan, I think, was saying, and that is that it is too bad that we didn't get an announcement here about 2:00 that said there was going to be a deferral. I don't know how we can implement that so that we know that there is going to be somebody asking for a deferral so we could announce that it is going to be deferred."

**GAROFALO** "There are times when we do do that."

**GOLTRY** "We don't always know in enough advance to really advise everyone about the deferral, and then there is the second issue of whether you would accept a deferral at this late time."

**WARREN** I understand that, too."

**GOLTRY** "I feel like it is the prerogative of MAPC to make that determination at this late time, rather than us, as staff, to intervene."

**WARREN** "There might be some folks that wouldn't sit here though, if they thought it was going to be deferred."

**KROUT** "If they got the notice, they shouldn't have necessarily showed up before 4:30, so they wouldn't have been here anyway."

**OSBORNE-HOWES** "But we could have announced that at 4:30, just to let them know that there was going to be a request for a deferral."

**GAROFALO** "We have had quite a few instances where we knew before the meeting and we have announced it. At this point, let's stick with voting on the schedule."

**MCKAY** "Do we have to approve it?"

**GAROFALO** "Yes, we have to approve the second half."

**KROUT** "You asked us to bring it back for your approval."

**MOTION:** That the MAPC calendar from July 2000 to December 2000 be approved.

**MCKAY** moved, **WARNER** seconded the motion, and it carried unanimously (10-0).

16. **A-0011** - The City of Wichita seeks the annexation of properties generally located south of 55<sup>th</sup> Street South from west of Seneca to the east and west of Grove.

**KROUT** "This is the second phase of annexation in the 55<sup>th</sup> and Seneca to Hillside area. We would like for you to find that the annexation by the City of Wichita would be consistent with the Comprehensive Plan, as you did for the first phase."

**MOTION:** That the Metropolitan Area Planning Commission find that the annexation is consistent with the Comprehensive Plan.

**MICHAELIS** moved, **MCKAY** seconded the motion, and it carried unanimously (10-0).

17. **Other Matters**

**GAROFALO** "Are there any other matters to come before this body? If not, we will take a motion to adjourn."

**MOTION:** That the Metropolitan Area Planning Commission adjourn.

**OSBORNE-HOWES** moved, **MARNELL** seconded the motion, and it carried unanimously. (10-0).

The meeting formally adjourned at 5:35 p.m.

State of Kansas     )  
Sedgwick County    ) ss

I, Marvin S. Krout, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on \_\_\_\_\_, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

\_\_\_\_\_  
Marvin S. Krout, Secretary  
Wichita-Sedgwick County Metropolitan  
Area Planning Commission

(SEAL)

